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CREDITORS OF THE SUBSIDIARY
DEBTORS**

**COUNSEL FOR FUTURE CLAIMS
REPRESENTATIVE
ROBERT C. PATE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re: § Case No. 05-21207
§
ASARCO LLC, et al., § Chapter 11
§
Debtors. § Jointly Administered

**DECLARATION OF JACOB L. NEWTON
IN SUPPORT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF THE SUBSIDIARY DEBTORS' AND THE FUTURE CLAIMS
REPRESENTATIVE ROBERT C. PATE'S MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND SUPPORTING MEMORANDUM OF LAW**

I, Jacob L. Newton, declare:

1. The matters stated herein are true and correct and are within my personal knowledge, and if called to testify as a witness, I could and would testify competently thereto.

2. This declaration is made in support of The Official Committee of Unsecured Creditors of the Subsidiary Debtors' and Future Claims Representative Robert C. Pate's Motion to Compel Production of Documents and Supporting Memorandum of Law ("Motion to Compel").

3. I am a shareholder in the law firm of Stutzman, Bromberg, Esserman & Plifka, a Professional Corporation ("SBEP"). SBEP is counsel for the Subsidiary Committee in *In re ASARCO LLC, et al.*, Case No. 05-21207, a Jointly Administered Chapter 11 Case pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "Texas Bankruptcy Case").

4. I am a member in good standing of the Bar of the State of Texas and am admitted to practice law in all state courts of the State of Texas, and before the United States District and Bankruptcy Courts for the Northern, Southern, Eastern and Western Districts of Texas.

5. I am familiar with the pleadings, transcripts and other documents filed and served in the Texas Bankruptcy Case.

6. Attached hereto as Exhibit A is a true and correct copy of the Plaintiffs' First Request for Production of Documents to Defendant ASARCO, LLC served on ASARCO, LLC ("ASARCO") by the Official Committee of Unsecured Creditors for the Subsidiary Debtors (the "Subsidiary Committee") and Robert C. Pate, Future Claims Representative for the Subsidiary Debtors ("FCR").

7. Attached hereto as Exhibit B is a true and correct copy of the May 13, 2008, trial transcript from *ASARCO LLC and Southern Peru Holdings Corp v.*

Americas Mining Corp, Civil Action No. B-07-018, In the United States District Court for the Southern District of Texas.

8. Attached hereto as Exhibit C are true and correct copies of excerpts from the May 20, 2008, trial transcript from *ASARCO LLC and Southern Peru Holdings Corp v. Americas Mining Corp*, Civil Action No. B-07-018, In the United States District Court for the Southern District of Texas.

9. Attached hereto as Exhibit D is a true and correct copy of an October 10, 2008 e-mail from the undersigned to Judith Ross of Baker Botts L.L.P. in which I request production of the Brownsville Evidence as that term is defined in the Motion to Compel.

10. On October 13, 2008, I received a phone call from Fernando Rodriguez of Baker Botts L.L.P. in response to my October 10, 2008 e-mail requesting production of the Brownsville Evidence. During the course of the October 13, 2008 phone call, Mr. Rodriguez intimated that ASARCO would not produce the Brownsville Evidence as requested.

11. Attached hereto as Exhibit E is a true and correct copy of a series of e-mails, starting with an April 24, 2009 e-mail from the undersigned to David Genender of Baker Botts L.L.P. in which I request production of the Brownsville Evidence as that term is defined in the Motion to Compel. Mr. Genender refuses to produce the Brownsville Evidence in an April 27, 2009 e-mail included on the e-mail string.

12. Attached hereto as Exhibit F is a true and correct copy of the Supplement to Second Amended Log of ASARCO-Only Privileged Documents provided the undersigned on April 30, 2009.

13. Attached hereto as Exhibit G is a true and correct copy of a November 6, 2008 Letter from Thomas O'Brien to George Royle V (the "O'Brien Letter") in which Mr. O'Brien identifies certain evidence that was inadvertently produced to Mr. Royle's client by ASARCO.

14. Attached hereto as Exhibit H is a true and correct copy of a series of e-mails, starting with an April 22, 2009 e-mail from the undersigned to David Genender and Tom O'Brien of Baker Botts L.L.P. in which I request production of the MRI Evidence as that term is defined in the Motion to Compel and as identified in the O'Brien Letter. Mr. O'Brien refuses to produce the MRI Evidence in an April 22, 2009 e-mail included on the e-mail string.

15. Attached hereto as Exhibit I is a true and correct copy of a June 6, 2008 e-mail from Jack Kinzie of Baker Botts L.L.P. to, *inter alios*, Sander Esserman of SBEP, in which Mr. Kinzie discloses the existence of minutes from ASARCO's board of directors meetings not previously produced by ASARCO.

16. Attached hereto as Exhibit J is a true and correct copy of an April 27, 2009 e-mail from the undersigned to David Genender of Banker Botts L.L.P. requesting all minutes and resolutions of ASARCO's board of directors that have not been produced to the Subsidiary Committee. I have received no response to this e-mail.

17. Attached hereto as Exhibit K is a true and correct copy of an April 24, 2009 letter from the undersigned to David M. Genender of Baker Botts L.L.P. in which I request the Porzio Documents as that term is defined in the Motion to Compel.

18. Attached hereto as Exhibit L is a true and correct copy of an April 29, 2009 e-mail from David Genender of Baker Botts, L.L.P. to the undersigned in response to the undersigned's April 24, 2009 letter.

19. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 2009, in Dallas, Texas.

/s/ Jacob L. Newton
Jacob L. Newton

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, <i>et al.</i> ,	§	Chapter 11
	§	
Debtors	§	(Jointly Administered)
	§	
<hr/>		
	§	
THE OFFICIAL COMMITTEE OF	§	
UNSECURED CREDITORS, in its official	§	
capacity as representative of the Subsidiary	§	Adv. Proceeding No. 05-02048
Debtors' (i) estates and (ii) creditors and	§	
claimants and ROBERT C. PATE, FUTURE	§	
CLAIMS REPRESENTATIVE, solely in his	§	
official capacity as representative of the	§	
Subsidiary Debtors' future creditor-claimants,	§	
	§	
Plaintiffs	§	
	§	
v.	§	
	§	
ASARCO, LLC, successor-in-interest to	§	
ASARCO INCORPORATED,	§	
	§	
Defendant	§	
	§	

**PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT ASARCO, LLC**

Pursuant to Fed. R. Civ. P. 34, as made applicable to this matter by Fed. R. Bankr. P. 7034 and Bankruptcy Local Rule 2004(g), Plaintiffs the Official Committee of Unsecured Creditors for the Subsidiary Debtors (the "Subsidiary Committee") and Robert C. Pate, Future Claims Representative for the Subsidiary Debtors ("FCR") submit the following Requests for Production to Defendant Asarco, LLC (as defined below, "ASARCO"). ASARCO must respond to these Interrogatories within thirty days of service of these Requests.

DEFINITIONS

1. "Adversary Proceeding" means Adversary Proceeding No. 05-02048 in the captioned case.

2. "Alter Ego Theories" shall include any theory asserted by an asbestos claimant in an attempt to hold ASARCO liable for the debts of CAPCO and LAQ. Such theories include, without limitation, denuding-the-corporation, single business-enterprise, corporate trust funds, breach of fiduciary duty, conspiracy, allegations that CAPCO and/or LAQ were the mere instrumentality, agent, or alter ego of ASARCO, allegations that the corporate veil should be pierced, and allegations that as a result of domination and control over any of the Subsidiary Debtors, directly or indirectly, ASARCO should be liable for asbestos-related claims or any other claims that have origins in acts or omissions of any of the Subsidiary Debtors, or any other theories (including without limitation any theory alleged in any count in the Amended Complaint) alleging direct or indirect liability for the conduct of, claims against, or demands on the Subsidiary 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. Each such theory is referred individually to as an "Alter Ego Theory."

3. "Amended Complaint" means the Amended Complaint filed on May 9, 2006, by the Subsidiary Committee and the FCR.

4. "ASARCO," "you," or "your" means Asarco LLC, and all of its predecessors, including the officers, directors, employees, agents, consultants, attorneys, and any other representatives of Asarco LLC, and its predecessors. By way of example, ASARCO shall include, without limitation, all of the following entities (as well as the officers, directors, employees, agents, consultants, attorneys, and any other representatives of such entities): (i) Asarco, LLC, successor by merger to Asarco, Inc.; and (ii) Asarco, Inc. f/k/a American Smelting and Refining Company.

5. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas.

6. "CAPCO" means all or any of the following entities: Capco Pipe Company, Inc. (f/k/a Cement Asbestos Products Company) and Cement Asbestos Products Company. CAPCO also includes all predecessors of the entities named above and all officers, directors, employees, agents, consultants, attorneys, and any other representatives of CAPCO.

7. "Communication" means and includes, without limitation of its generality, statements, discussions, conversations, letters, speeches, meetings, remarks, questions, answers, whether written or oral. This includes both communications and statements that are face to face, or transmitted by media such as wire, telephones, and computers.

8. "Complaint" means that certain Complaint filed by ASARCO against the Subsidiary Debtors, their estates, and the Future Claims Representative on June 15, 2005, docketed as Adversary Proceeding No. 05-2048-C, under Case No. 05-20521-C-11, in the United States Bankruptcy Court for the Southern District of Texas.

9. To "describe in detail" means to give a complete and full description concerning the matter upon which the inquiry is made, including the full name, address, and telephone number of the Persons involved, if appropriate, along with dates, times, places, identification numbers, amounts, and other particulars which make the answers fair and meaningful.

10. The terms "Document" or "Documents" means writings of every kind, source, and authorship, both originals and/or all non-identical copies thereof, in your possession, custody, or control, or known by you to exist, irrespective of whether the writing is one intended for or transmitted internally by you, or intended for or transmitted to any other Person or entity, including, without limitation, any government agency, department, administrative entity, or Personnel. The term shall include handwritten, typewritten, printed, electronic, photocopied, photographic, or recorded matter. It shall include communications in words, symbols, pictures, sound recordings, films, tapes, and information stored in, or accessible through, computer or other information storage or retrieval systems, together with the codes and/or programming instructions and other materials necessary to understand and use such systems. For purposes of illustration, and not limitation, the term shall include: correspondence; transcripts of testimony; transcripts of deposition testimony; letters; e-mail; notes; reports; papers; files; books; other communications sent or received; diaries; calendars; logs, notes, or memoranda of telephonic or face-to-face conversations; drafts; work papers; agendas; bulletins; notices; circulars; announcements; instructions; schedules; minutes, summaries, notes, and other records and recordings of any conferences, meetings, visits, statements, interviews, or telephone conversations; bills, statements, and other records of obligations and expenditures; canceled checks, vouchers, receipts, and other records of payments; ledgers, journals, balance sheets, profit and loss statements, and other sources of financial data; analyses; statements; interviews; affidavits; printed matter (including published books, articles, speeches, and newspaper clippings); press releases; charts; drawings; specifications; manuals; brochures; parts lists; memoranda of all kinds to and from any Person, agency, or entity; evaluations, advice, recommendations, commentaries, conclusions, studies, tests, manuals, procedures, data, reports, and results; records of administrative, technical, and financial actions taken or recommended; and all other writings, the contents of which relate to, discuss, consider, or otherwise refer to the subject matter of the particular discovery requested.

11. "FCR" means Robert C. Pate, the legal representative for future asbestos-related claimants who may assert claims against the Debtors, appointed by the Court as such by order dated April 19, 2005.

12. To "Identify" with respect to a Communication shall include a statement of the following, where applicable:

- a. The name of each Person who participated in the communication and the name of each Person who was present at the time it was made;
- b. By whom each such Person was employed and who such Person represented or purported to represent in making such oral communication;
- c. The substance of the communication;
- d. The date when and the place where such oral communication was made;
- e. The nature and substance of each Document recording or pertaining to such oral communication with sufficient particularity to enable it to be identified;
- f. The physical location of each such Document and the name of its custodian(s); and
- g. Whether such Documents shall be voluntarily made available to Plaintiffs for inspection and copying; and if not, the reasons.

13. To "Identify" with respect to a Document shall mean to state the Document's date, the full name(s) of the Person(s) who prepared the Document, the type of Document (e.g., letter, telecopy, memorandum, receipt, invoice, schedule, report, telegram, handwritten or typewritten notation, chart, photograph, sound representations, or written transcription of verbal communication, etc.), the full names of the Person(s) who received the Document or a copy thereof or for whom the Document was prepared, a brief description of the subject matter of the Document, the title of the Document (if any), its present location, and the full name of the present custodian of the Document;

14. To "Identify" with respect to a Person shall include a statement of the following, where applicable:

- a. The full name of the Person;
- b. That Person's present employer and job title, if known; if not known, the answer shall so state;
- c. That Person's employer and job title prior to his present employer and job title, if known; if not known, the answer shall state;
- d. The employer and job title of such Person at the time of the event, transaction, or occurrence to which the Interrogatory relates, if there has been any change since that time;
- e. That Person's present business and residence addresses and telephone numbers, if known; if not known, then his last-known business and residence addresses and telephone numbers; and

- f. That Person's affiliation at any time with you, by employment or otherwise, if any, including the nature and dates of such affiliations.

15. "Interrogatories" means Plaintiffs' First Set of Interrogatories, each being an "Interrogatory."

16. "LAQ" means all or any of the following entities: Lac d'Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.), Lake Asbestos of Quebec, Ltd., and LAQ Canada, Ltd. LAQ also includes all predecessors of the entities named above and all officers, directors, employees, agents, consultants, attorneys, and any other representatives of LAQ.

17. "Person(s)" means all individuals and entities, and shall be deemed to include natural Persons, firms, partnerships, associations, organizations, joint ventures, corporations, affiliates, and any other entities, including the predecessors and/or successors of each. Any reference to a Person that is a natural Person shall include that Person's agents, representatives, predecessors, successors, and assigns. Any reference to a Person that is not a natural Person shall include such Person's officers, directors, agents, shareholders, representatives, successors, predecessors, and assigns.

18. "Petition Date" means April 11, 2005, for the Subsidiary Debtors, and August 9, 2005, for ASARCO.

19. "Relating to" or "related to" when used with respect to any given subject, shall mean constitutes, contains, embodies, evidences, reflects, identifies, states, refers to, concerns, deals with, or is in any manner whatsoever reasonably pertinent to that subject.

20. "Requests for Production" means Plaintiffs' Requests for Production of Documents, each being a Request for Production.

21. "Subsidiary Committee" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee on or about April 27, 2005, in the Subsidiary Debtors' chapter 11 cases.

22. "Subsidiary Debtors" means all and/or any of the following: Lac d'Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.), Lake Asbestos of Quebec, Ltd., LAQ Canada, Ltd., Capco Pipe Company, Inc. (f/k/a Cement Asbestos Products Company), and Cement Asbestos Products Company, each being a Subsidiary Debtor.

INSTRUCTIONS

1. ASARCO is required to answer fully, in writing and under oath, each of the following requests and to serve a copy of the discovery answers on counsel for Plaintiffs within thirty (30) days of service of these requests, at the offices of Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation, 2323 Bryan Street, Suite 2200, Dallas, Texas 75201, and at the offices of Oppenheimer, Blend, Harrison & Tate, Inc., 711 Navarro Street, Suite 600, San Antonio, TX 78205.

2. ASARCO shall quote each discovery request, including each sub-part thereof, immediately before each response.

3. In responding to the following Requests for Production, ASARCO shall furnish all responsive information. If ASARCO cannot respond to the following requests in full after exercising reasonable diligence to secure the information to do so, ASARCO shall so state and respond to the extent possible. If a refusal to produce a Document is stated on the grounds that the answer or production is unduly burdensome, ASARCO shall identify the number and nature of Documents needed to be searched, the location of the Documents, and the estimated number of work hours and costs required to conduct the search.

4. In producing any Documents in response or partial response to any of these Requests for Production and/or the corresponding Interrogatories, ASARCO shall produce all Documents in its possession, custody or control, including Documents held by its attorneys, experts, agents or representatives, or anyone acting or purporting to act on its behalf or under its control.

5. All Documents that relate or respond, in whole or in part, to any Requests for Production or other discovery request (or that relate to the subject matter of any Interrogatory or other discovery request) shall be produced in their entirety, including all attachments and enclosures. All copies of all such Documents (including drafts of such Documents) that have handwritten or other notations, comments, underlining, or marks of any kind also shall be produced in their entirety, without abbreviation or reduction.

6. The Documents are to be produced as they are kept in the ordinary course of business or they shall be organized and labeled to correspond with the categories in the individual request. If Documents requested are maintained in a labeled file, the requests shall be deemed to include the file cover or label and any other identifying marks on the file.

7. Whenever a Request for Production or an Interrogatory calls for a Document or information that is not available to ASARCO in the form requested, but which is available in another form or can be obtained at least in part from another form, ASARCO shall so state and either supply the information requested in the form in which it is available or supply the data from which the information requested can be obtained.

8. All Documents produced in response to these Requests for Production and/or to any Interrogatory shall identify the location and identity of the particular file in which it was found and the name of the Person who is or was custodian of that file. Information or Documents that are responsive to more than one Request for Production or Interrogatory need be produced only once.

9. If ASARCO contends to be entitled to withhold from production any of the information or Documents identified in these Requests for Production or in the corresponding Interrogatories on the basis of attorney-client privilege, work product doctrine, or any other ground, ASARCO shall provide a list identifying—for each Document—the following:

- a. the nature of the privilege asserted;
- b. the date, subject matter, and location of the Document;
- c. the identities of the Persons who authored and received it;
- d. the identity of each Person to whom the contents have been communicated; and
- e. the paragraph number of the discovery request to which the Document is responsive.

10. All uses of the conjunctive shall be interpreted as including the disjunctive and vice versa. Words in the singular shall be interpreted as including the plural and vice versa. Verbs shall be interpreted to include all conjugations. Words of one gender shall be interpreted as including the other genders.

11. In the event that any Document identified in the answers to Interrogatories or Requests for Production, including any supplement thereof, is no longer in the possession, custody or control of ASARCO or one or more of ASARCO's attorneys, experts, agents, representatives, successors, predecessors, assigns, or anyone acting or purporting to act on ASARCO's behalf or under its control, that Document is to be identified in writing as follows:

- a. addresser, addressee, Person who prepared or authored the Document, and indicated or blind copies;
- b. date of preparation or transmittal;
- c. subject matter, number of pages, and attachments or appendices;
- d. all Persons to whom the Document was distributed; and
- e. date of removal or destruction and, if removed or destroyed, the manner of removal or destruction, the reason for removal or destruction, and the Person who actually removed or destroyed the Documents.

12. Where a discovery request contains a general question, followed by a specific question, the specific question is not to be interpreted as limiting the general question.

13. In lieu of producing originals or copies thereof, ASARCO may elect to submit legible photographic or other reproductions of such Documents, provided that the originals or copies from which such reproductions were made are retained by ASARCO until the disposition of this litigation.

14. These requests are continuing in nature and require prompt further and supplemental production if ASARCO or any of the Persons listed on paragraph 6 below create additional Documents, or if additional Documents come into the possession custody, or control of ASARCO.

15. Unless otherwise stated therein, ASARCO is to answer each Request for Production using the period from 1962 to present as the relevant time frame.

FIRST SET OF REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Produce all books, files, records, Documents, and Communications that are or were the books, files, records, Documents, and Communications of any Subsidiary Debtor.

Answer:

REQUEST FOR PRODUCTION NO. 2:

Produce all files, records, Documents, and Communications relating to any claim asserted or litigation filed against any Subsidiary Debtor.

Answer:

REQUEST FOR PRODUCTION NO. 3:

Produce all Communications and correspondence, whether handwritten, typewritten, printed, electronic, photocopied, photographic, or recorded in some other manner, between ASARCO and CAPCO.

Answer:

REQUEST FOR PRODUCTION NO. 4:

Produce all Communications and correspondence, whether handwritten, typewritten, printed, electronic, photocopied, photographic, or recorded in some other manner, between ASARCO and LAQ.

Answer:

REQUEST FOR PRODUCTION NO. 5:

Produce all Communications and correspondence, whether handwritten, typewritten, printed, electronic, photocopied, photographic, or recorded in some other manner, between CAPCO and LAQ.

Answer:

REQUEST FOR PRODUCTION NO. 6:

Produce all Documents, Communications, and memoranda, internal or otherwise, prepared by CAPCO and relating to asbestos.

Answer:

REQUEST FOR PRODUCTION NO. 7:

Produce all Documents, Communications, and memoranda, internal or otherwise, prepared by LAQ and relating to asbestos.

Answer:

REQUEST FOR PRODUCTION NO. 8:

Produce all Documents, Communications, and memoranda, internal or otherwise, prepared by ASARCO and relating to any claim against or liability of CAPCO or LAQ for exposure to asbestos.

Answer:

REQUEST FOR PRODUCTION NO. 9:

Produce all Documents and Communications that you reviewed in formulating your responses to the Interrogatories, specifying in your Answer what Documents you reviewed in connection with each Interrogatory.

Answer:

REQUEST FOR PRODUCTION NO. 10:

Produce all Documents and Communications identified in or that relate to or support any response to any Interrogatory, specifying in your Answer what Documents you reviewed in connection with each Interrogatory.

Answer:

REQUEST FOR PRODUCTION NO.11:

Produce CAPCO's employment records, segregated by year, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 12:

Produce LAQ's employment records, segregated by year, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 13:

Produce documents sufficient to identify the employee and periods of employment of any employee of ASARCO who was also an employee at any time of CAPCO or LAQ.

Answer:

REQUEST FOR PRODUCTION NO. 14:

Produce CAPCO's payroll records, segregated by year, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 15:

Produce LAQ's payroll records, segregated by year, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 16:

Produce all documents relating to any compensation by ASARCO to or for the benefit of any employee of CAPCO or LAQ.

Answer:

REQUEST FOR PRODUCTION NO. 17:

Produce all Documents and Communications relating to every lawsuit filed against ASARCO and relating to asbestos in any way.

Answer:

REQUEST FOR PRODUCTION NO. 18

Produce all Documents and Communications relating to every lawsuit naming both CAPCO and ASARCO, regardless of the subject matter of such lawsuit.

Answer:

REQUEST FOR PRODUCTION NO. 19:

Produce all Documents and Communications relating to every lawsuit naming both LAQ and ASARCO, regardless of the subject matter of such lawsuit.

Answer:

REQUEST FOR PRODUCTION NO. 20:

To the extent not already produced in response to a prior Request for Production, produce all deposition testimony relating to every lawsuit naming both CAPCO and ASARCO, regardless of the subject matter of such lawsuit.

Answer:

REQUEST FOR PRODUCTION NO. 21:

To the extent not already produced in response to a prior Request for Production, produce all deposition testimony relating to every lawsuit naming both LAQ and ASARCO, regardless of the subject matter of such lawsuit.

Answer:

REQUEST FOR PRODUCTION NO. 22:

To the extent not already produced in response to a prior Request for Production, produce all deposition testimony relating to every lawsuit filed against ASARCO and relating to asbestos in any way.

Answer:

REQUEST FOR PRODUCTION NO. 23:

To the extent not already produced in response to a prior Request for Production, produce all judgments—agreed, contested, default, or otherwise—entered against CAPCO and relating in any way to asbestos.

Answer:

REQUEST FOR PRODUCTION NO. 24:

To the extent not already produced in response to a prior Request for Production, produce all judgments—agreed, contested, default, or otherwise—entered against LAQ and relating in any way to asbestos.

Answer:

REQUEST FOR PRODUCTION NO. 25:

To the extent not already produced in response to a prior Request for Production, produce all judgments—agreed, contested, default, or otherwise—entered against ASARCO and relating in any way to asbestos.

Answer:

REQUEST FOR PRODUCTION NO. 26:

To the extent not already produced in response to a prior Request for Production, produce all settlement agreements executed jointly by ASARCO and any Subsidiary Debtor.

Answer:

REQUEST FOR PRODUCTION NO. 27:

To the extent not already produced in response to a prior Request for Production, produce all settlement agreements executed by any Subsidiary Debtor and guaranteed by ASARCO.

Answer:

REQUEST FOR PRODUCTION NO. 28:

Produce all Documents and Communications relating to any guaranty or pledge of assets executed by ASARCO for any loan, extension of credit, or other obligation of CAPCO.

Answer:

REQUEST FOR PRODUCTION NO. 29:

Produce all Documents and Communications relating to any guaranty or pledge of assets executed by ASARCO for any loan, extension of credit, or other obligation of LAQ.

Answer:

REQUEST FOR PRODUCTION NO. 30:

Produce all Documents and Communications relating to any guaranty or pledge of assets executed by CAPCO for any loan, extension of credit, or other obligation of ASARCO.

Answer:

REQUEST FOR PRODUCTION NO. 31:

Produce all Documents and Communications relating to any guaranty or pledge of assets executed by LAQ for any loan, extension of credit, or other obligation of ASARCO.

Answer:

REQUEST FOR PRODUCTION NO. 32:

Produce all Documents and Communications relating to any Subsidiary Debtor obligation upon which ASARCO was also obligated.

Answer:

REQUEST FOR PRODUCTION NO. 33:

Produce all Documents and Communications relating to any ASARCO obligation upon which any Subsidiary Debtor was also obligated.

Answer:

REQUEST FOR PRODUCTION NO. 34:

Produce all Documents and Communications relating to CAPCO's sale or transfer of any goods, services, or other asset to ASARCO.

Answer:

REQUEST FOR PRODUCTION NO. 35:

Produce all Documents and Communications relating to LAQ's sale or transfer of any goods, services, or other asset to ASARCO.

Answer:

REQUEST FOR PRODUCTION NO. 36:

Produce all Documents and Communications relating to ASARCO's sale or transfer of any goods, services, or other asset to CAPCO.

Answer:

REQUEST FOR PRODUCTION NO. 37:

Produce all Documents and Communications relating to ASARCO's sale or transfer of any goods, services, or other asset to LAQ.

Answer:

REQUEST FOR PRODUCTION NO. 38:

Produce all Documents and Communications relating to the sale, transfer, or other disposition of substantially all of CAPCO's assets or cessation of operations.

Answer:

REQUEST FOR PRODUCTION NO. 39:

Produce all Documents and Communications relating to the sale, transfer, or other disposition of substantially all of LAQ's assets or cessation of operations.

Answer:

REQUEST FOR PRODUCTION NO. 40:

Produce all Documents and Communications relating to any attorney-client communication(s) between CAPCO and its counsel and concerning or relating in any way to asbestos.

Answer:

REQUEST FOR PRODUCTION NO. 41:

Produce all Documents and Communications relating to any attorney-client communication(s) between LAQ and its counsel and concerning or relating in any way to asbestos.

Answer:

REQUEST FOR PRODUCTION NO. 42:

Produce all leases, including any Document or Communication relating thereto, by ASARCO to CAPCO (or any Person affiliated with CAPCO) of any facility, office space, laboratory space, or equipment.

Answer:

REQUEST FOR PRODUCTION NO. 43:

Produce all leases, including any Document or Communication relating thereto, by ASARCO to LAQ (or any Person affiliated with LAQ) of any facility, office space, laboratory space, or equipment.

Answer:

REQUEST FOR PRODUCTION NO. 44

Produce all leases, including any Document or Communication relating thereto, by CAPCO to ASARCO of any facility, office space, laboratory space, or equipment.

Answer:

REQUEST FOR PRODUCTION NO. 45:

Produce all leases, including any Document or Communication relating thereto, by LAQ to ASARCO of any facility, office space, laboratory space, or equipment.

Answer:

REQUEST FOR PRODUCTION NO. 46:

Produce all Documents and Communications, including deposition testimony, relating to the lawsuit styled *Clarence Ervin Alverson et al. v. William H. Beasley et al.*, Civil Action Number CV96-700, filed in the Circuit Court of Jefferson County, Alabama.

Answer:

REQUEST FOR PRODUCTION NO. 47:

Produce all Documents and Communications relating in any way to any loan or extension of credit from ASARCO to or for the benefit of CAPCO.

Answer:

REQUEST FOR PRODUCTION NO. 48:

Produce all Documents and Communications relating in any way to any loan or extension of credit from ASARCO to or for the benefit of LAQ.

Answer:

REQUEST FOR PRODUCTION NO. 49:

Produce all Documents and Communications relating in any way to any loan or extension of credit from CAPCO to or for the benefit of ASARCO.

Answer:

REQUEST FOR PRODUCTION NO. 50:

Produce all Documents and Communications relating in any way to any loan or extension of credit from LAQ to or for the benefit of ASARCO.

Answer:

REQUEST FOR PRODUCTION NO. 51:

Produce all Documents and Communications relating in any way to any advance of funds from ASARCO to or for the benefit of CAPCO for goods to be supplied or services to be performed in the future.

Answer:

REQUEST FOR PRODUCTION NO. 52:

Produce all Documents and Communications relating in any way to any advance of funds from ASARCO to or for the benefit of LAQ for goods to be supplied or services to be performed in the future.

Answer:

REQUEST FOR PRODUCTION NO. 53:

Produce all Documents and Communications relating in any way to any advance of funds from CAPCO to or for the benefit of ASARCO for goods to be supplied or services to be performed in the future.

Answer:

REQUEST FOR PRODUCTION NO. 54:

Produce all Documents and Communications relating in any way to any advance of funds from LAQ to or for the benefit of ASARCO for goods to be supplied or services to be performed in the future.

Answer:

REQUEST FOR PRODUCTION NO. 55:

Produce all written or recorded statements relating to any Alter Ego Theory and made by any Person who has knowledge of any of the facts underlying the allegations or defenses in this Adversary Proceeding.

Answer:

REQUEST FOR PRODUCTION NO. 56:

Produce all written or recorded statements or reports prepared by any expert witness that you expect to testify at the trial of this case.

Answer:

REQUEST FOR PRODUCTION NO. 57:

Produce all written or recorded statements or reports prepared by any expert witness that will not testify at the trial of this case, but which written or recorded statements or reports have been or may be relied upon by an expert witness that you expect to testify at the trial of this case.

Answer:

REQUEST FOR PRODUCTION NO. 58:

Produce all Documents and/or Communications relating to this case that have been or may be relied upon by any expert witness that you expect to testify at the trial of this case.

Answer:

REQUEST FOR PRODUCTION NO. 59:

Produce all insurance policies that might provide coverage for any asbestos claim now asserted or that may in the future be asserted against ASARCO or any Subsidiary Debtor.

Answer:

REQUEST FOR PRODUCTION NO. 60:

Produce all corporate organization charts, by year from 1962-2004.

Answer:

REQUEST FOR PRODUCTION NO. 61:

Produce unedited minutes of all meetings of ASARCO's board of directors, for the period 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 62:

Produce unedited minutes of all meetings of CAPCO's board of directors, from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 63:

Produce unedited minutes of all meetings of LAQ's board of directors, from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 64:

Produce unedited minutes of all meetings of ASARCO's audit committee, for the period 1962-2004.

Answer:

REQUEST FOR PRODUCTION NO. 65:

Produce unedited minutes of all meetings of the audit committee of any Subsidiary Debtor, from the formation of such Subsidiary Debtor to present.

Answer:

REQUEST FOR PRODUCTION NO. 66:

Produce all Documents and Communications relating to any internal audit report prepared by ASARCO, or by any Person affiliated with ASARCO, for the period 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 67:

Produce all Documents and Communications relating to any internal audit report prepared by CAPCO, or by any Person affiliated with CAPCO, from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 68:

Produce all Documents and Communications relating to any internal audit report prepared by LAQ, or by any Person affiliated with LAQ, from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 69:

Produce all Documents and Communications relating to any analysis or presentation of intercompany balances and transactions between ASARCO and CAPCO, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 70:

Produce all Documents and Communications relating to any analysis or presentation of intercompany balances and transactions between ASARCO and LAQ, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 71:

Produce all Documents and Communications relating to any analysis of intercompany balances and transactions between CAPCO and LAQ, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 72:

Produce all SEC comment letters relating to ASARCO, including all Documents and Communications relating thereto, for the period 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 73:

Produce all SEC comment letters relating to CAPCO, including all Documents and Communications relating thereto, from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 74:

Produce all SEC comment letters relating to LAQ, including all Documents and Communications relating thereto, from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 75:

Produce all ASARCO 10-K reports for the period 1962 to 1968.

Answer:

REQUEST FOR PRODUCTION NO. 76:

Produce all CAPCO 10-K reports for the period from its formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 77:

Produce all LAQ 10-K reports for the period from its formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 78:

Produce all audited consolidated financial statements of ASARCO (with accountants' reports), and all other Documents and Communications relating thereto, for the period from 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 79:

Produce all consolidating financial statements of ASARCO (with eliminating entries, notes and narratives describing those entries), and all other Documents and Communications relating thereto, for the period from 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 80:

Produce all audited consolidated financial statements of CAPCO (with accountants' reports), and all other Documents and Communications relating thereto, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 81:

Produce all consolidating financial statements of CAPCO (with eliminating entries, notes and narratives describing those entries), and all other Documents and Communications relating thereto, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 82:

Produce all audited consolidated financial statements of LAQ (with accountants' reports), and all other Documents and Communications relating thereto, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 83:

Produce all consolidating financial statements of LAQ (with eliminating entries, notes and narratives describing those entries), and all other Documents and Communications relating thereto, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 84:

Produce all contracts, including all Documents and Communications relating thereto, between ASARCO and CAPCO, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 85:

Produce all contracts, including all Documents and Communications relating thereto, between ASARCO and LAQ, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 86:

Produce all Documents and Communications relating to support services agreements between ASARCO and CAPCO, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 87:

Produce all Documents and Communications relating to support services agreements between ASARCO and LAQ, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 88:

Produce all Documents and Communications relating to support services agreements between CAPCO and LAQ, for the period from CAPCO's formation to present.

REQUEST FOR PRODUCTION NO. 89:

Produce all Documents relating to any tax sharing agreement(s) between ASARCO and CAPCO, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 90:

Produce all Documents relating to any tax sharing agreement(s) between ASARCO and LAQ, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 91:

Produce all Documents and Communications relating to any payment(s) made pursuant to, or book entry relating to, any intercompany agreement between ASARCO and CAPCO, including any payment or obligation for support service(s), taxes, legal fees, accounting fees, etc., for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 92:

Produce all Documents and Communications relating to any payment(s) made pursuant to, or book entry relating to, any intercompany agreement between ASARCO and LAQ, including any payment or obligation for support service(s), taxes, legal fees, accounting fees, etc., for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 93:

Produce all Documents and Communications showing common board members between ASARCO and CAPCO, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 94:

Produce all Documents and Communications showing common board members between ASARCO and LAQ, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 95:

Produce Documents and Communications showing common board members between CAPCO and LAQ, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 96:

Produce all Documents and Communications relating to the solvency or insolvency of ASARCO, including without limitation any solvency letters or opinions issued by or on behalf of ASARCO, for the period from 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 97:

Produce all Documents and Communications relating to the solvency or insolvency of CAPCO, including without limitation any solvency letters or opinions issued by or on behalf of CAPCO, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 98:

Produce all Documents and Communications relating to the solvency or insolvency of LAQ, including without limitation any solvency letters or opinions issued by or on behalf of LAQ, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 99:

Produce all lists or schedules of asbestos-related claims made or asserted against ASARCO, including all Documents and Communications relating thereto, for the period from 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 100:

Produce all lists or schedules of asbestos-related claims made or asserted against CAPCO, including all Documents and Communications relating thereto, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 101:

Produce all lists or schedules of asbestos-related claims made or asserted against LAQ, including all Documents and Communications relating thereto, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 102:

Produce all Documents and Communications relating to any estimate of ASARCO's actual or potential asbestos liabilities, for the period from 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 103:

Produce all Documents and Communications relating to any estimate of CAPCO's actual or potential asbestos liabilities, for the period from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 104:

Produce all Documents and Communications relating to any estimate of LAQ's actual or potential asbestos liabilities, for the period from LAQ's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 105:

Produce all Documents and Communications relating to any third party consultant's, governmental agency's, or any other third party's reports related to the estimation of any actual or potential liability of ASARCO referred to in Requests for Production No. 102 above.

Answer:

REQUEST FOR PRODUCTION NO. 106:

Produce all Documents and Communications relating to any third party consultant's, governmental agency's, or any other third party's reports related to the estimation of any actual or potential liability of CAPCO referred to in Requests for Production No. 103 above.

Answer:

REQUEST FOR PRODUCTION NO. 107:

Produce all Documents and Communications relating to any third party consultant's, governmental agency's, or any other third party's reports related to the estimation of any actual or potential liability of LAQ referred to in Requests for Production No. 104 above.

Answer:

REQUEST FOR PRODUCTION NO. 108:

Produce all Documents and Communications relating to Department of Justice proceedings, including citations and claims, for the period from 1962 to present (excluding the February 3, 2003, Consent Decree).

Answer:

REQUEST FOR PRODUCTION NO. 109:

Produce all Documents and Communications relating to policies and procedures with related working papers regarding the allocation of corporate overhead by ASARCO to any Subsidiary Debtor.

Answer:

REQUEST FOR PRODUCTION NO. 110:

Produce all Documents relating to business plan(s) of ASARCO, including multi-year plans with forecasts, from 1962 to present.

Answer:

REQUEST FOR PRODUCTION NO. 111:

Produce all Documents relating to business plan(s) of any Subsidiary Debtor, including multi-year plans with forecasts.

Answer:

REQUEST FOR PRODUCTION NO. 112:

Produce all Documents and Communications relating to CAPCO's annual operating and cash flow budgets from CAPCO's formation to present, with performance variances.

Answer:

REQUEST FOR PRODUCTION NO. 113:

Produce all Documents and Communications relating to LAQ's annual operating and cash flow budgets from LAQ's formation to present, with performance variances.

Answer:

REQUEST FOR PRODUCTION NO. 114:

Produce all Documents and Communications relating to any CAPCO bank credit agreement from CAPCO's formation to present.

Answer:

REQUEST FOR PRODUCTION NO. 115:

Produce all Documents and Communications relating to any LAQ bank credit agreement from LAQ's formation to present.

Answer:

Dated: May 12, 2006

Respectfully submitted,

**STUTZMAN, BROMBERG, ESSERMAN &
PLIFKA, A PROFESSIONAL CORPORATION**

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CERTIFICATE OF SERVICE

I, Peter D'Apice, hereby certify that on May 12, 2006, a true and correct copy of the foregoing pleading was served by electronic mail and first-class mail, postage prepaid, on counsel of record listed below:

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EXHIBIT B

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

)
ASARCO LLC AND SOUTHERN PERU)
HOLDINGS CORPORATION)
)
) CIVIL ACTION NO.
VS.) B-07-018
)
AMERICAS MINING CORPORATION)

)

JURY TRIAL
BEFORE THE HONORABLE ANDREW S. HANEN
MAY 13, 2008
MORNING SESSION

1 THE COURT: Thank you. Be seated, please.

2 MR. SADLER: Judge, there's one housekeeping matter, if
3 I may. We have now a signed stipulation by both parties that
4 will be filed later today concerning Craig Hansen's deposition
5 where there were issues that the transcript didn't match with
6 the spoken word.

7 THE COURT: Okay.

8 MR. SADLER: That's being filed. I'll hand up to the
9 court the signed copy, but that should take care of that one
10 housekeeping issue.

11 THE COURT: All right. Good. Let me raise a
12 housekeeping issue, because I know while you guys are here,
13 there are many other people that are helping the people in the
14 courtroom. And to give them something to work on, you know,
15 since I don't expect a brief in support of Mr. Terrell's opening
16 statement like I got yesterday, I do -- I would solicit this.
17 In AMC's bench brief and even yesterday, I think, when talking
18 about Delaware law and talking about alter ego, they mentioned
19 that the burden of proof on that issue would be clear and
20 convincing, and I'm interested in any law on the burden of proof
21 requirement there.

22 MR. TERRELL: Yes. We believe that's not true, and
23 we'll submit it to you.

24 THE COURT: Okay. Somehow I didn't want that to slip by
25 without, all of a sudden, one side seemed clear and convincing

1 and the other side acquiescent by silence, or if they think it
2 should be preponderance of the evidence, I'd like to know why
3 you think that.

4 Okay. Mr. Antweil?

5 MR. ANTWEIL: Good morning. Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. ANTWEIL:

8 Q Good morning, Mr. Patton.

9 A Yes, sir. Good morning to you too.

10 Q One of the factors that you looked at, as a member of the
11 restructuring committee, was whether or not the transaction
12 would pay ASARCO reasonably equivalent value; isn't that
13 correct?

14 A Yes, sir.

15 Q And one of the things you relied on was the Ernst & Young
16 opinion, true?

17 A Yes, sir.

18 Q And you relied on other things, didn't you, to determine
19 whether or not reasonably equivalent value was paid?

20 A I was aware of other things, but I relied on the opinion.

21 Q Okay. Well, for example, you looked at a Houlihan Lokey
22 document that suggested a value similar to the Ernst & Young
23 valuation, true?

24 A I don't remember looking at it, but I remember being aware
25 of it, and I mentioned it in the minutes that there was such a

1 valuation.

2 Q And you also knew that the Southern Peru Copper stock was
3 traded publicly, didn't you?

4 A I did, sir.

5 Q And you also looked at the trading and the market price and
6 how the -- the market valuation of the company based upon that
7 market price?

8 A I was aware of that, and I asked Ernst & Young to reconcile
9 their valuation against the market price of the SPCC shares,
10 yes.

11 Q And they did that to your satisfaction?

12 A Yes, sir.

13 Q Okay. And you were also aware that the United States had
14 sued -- the Department of Justice had sued ASARCO for fraudulent
15 transfer?

16 A Yes, sir.

17 Q And that lawsuit was pending at the time you were appointed
18 to the board of directors?

19 A Yes.

20 Q And you understood the United States was the largest
21 creditor of ASARCO?

22 A I didn't know whether it was the largest or not, but I knew
23 it was really big.

24 Q And you knew they had retained an expert by the name of
25 Behre Dolbear?

1 A I recall the name, yes.

2 Q And they did a valuation, didn't they?

3 A Yes, sir.

4 Q And in your fiduciary -- as part of your fiduciary
5 obligation, you felt it was necessary to review that, true?

6 A No. It was necessary for me to have that reconciled by E&Y,
7 and I asked them to do that.

8 Q And the reconciliation was necessary because the
9 Behre Dolbear valuation was higher by a significant amount than
10 the Ernst & Young valuation?

11 A Yes. The reconciliation was necessary for that reason, and
12 also it needed to happen in order to settle with the government
13 if there was such a big difference of opinion.

14 Q Right. And, in fact, that reconciliation was done?

15 A Yes, sir.

16 Q To your satisfaction?

17 A I was told that Ernst & Young had reconciled it, and the
18 government accepted the consent decree and accepted the E&Y
19 valuation, so I understood the situation was resolved.

20 Q And you felt it was your job, as a board member and member
21 of the restructuring committee and part of your due diligence,
22 to question EYCF about the work they did?

23 A Yes, I needed to ascertain whether they had been diligent
24 and responsible in their work.

25 Q And you did that?

1 A I did, yes.

2 Q And you asked EYCF to present a summary to the restructuring
3 committee of the work they had done?

4 A I don't recall asking, but they did do it.

5 Q And they did that on January 27th?

6 A They did it on January 27th, and they also gave us updates
7 and partial presentations at the preceding meetings.

8 Q You relied on their advice?

9 A I did, sir, yes.

10 Q You relied on the advice of Squire Sanders?

11 A Yes.

12 Q And you relied on your own expertise to come to a conclusion
13 that reasonably equivalent value was being paid for the shares
14 of SPCC stock?

15 A I relied on Ernst & Young's analysis, and I thought it was
16 appropriate for me to do so, but I did not make an evaluation
17 myself.

18 Q Okay. But you had the expertise to consider whether Ernst &
19 Young did an acceptable job?

20 A Yes, sir.

21 Q And you determined that they did?

22 A I did.

23 Q Now, I want to shift gears to the idea of selling the shares
24 to a related party, which was AMC in this case. Now, when you
25 joined the board, you were told that a substantial amount of

1 work had been done in considering alternatives to selling the
2 SPCC shares?

3 A Yes, sir.

4 Q You were advised of those alternatives by both Ernst & Young
5 and Squire Sanders?

6 A I was told they did a substantial amount of work; and they
7 had concluded, particularly in the context of the time frame,
8 that the best resolution for ASARCO was to sell the shares to
9 AMC.

10 Q And you didn't see any reason, based upon the information
11 you received, to stop the sale as a result of that, true?

12 A No, I thought my role was to focus on whether reasonably
13 equivalent value was paid and whether, post sale, the company
14 would be solvent and capable of conducting its affairs in the
15 ordinary course.

16 Q You heard about many reasons why the sale of stock to AMC
17 made -- was a better deal for ASARCO as opposed to selling it to
18 a third party?

19 A They provided me with a list, yes, sir.

20 Q One of those was tax considerations?

21 A Yes, sir.

22 Q And that information was provided to you, and you had the
23 ability to analyze that information?

24 A Within my capacity to analyze tax things, yes, sir.

25 Q And if you didn't have the capacity, you could go to

1 Squire Sanders or Ernst & Young and get those questions answered
2 to your satisfaction?

3 A I did ask questions and I, in fact, met with a tax lawyer at
4 Squire Sanders.

5 Q Okay. One of the other issues you looked at was a
6 shareholders agreement that existed between ASARCO and two other
7 owners of the Southern Peru Copper shares?

8 A I was aware of its existence, yes, sir.

9 Q You looked at that agreement, didn't you?

10 A I think I did, yes.

11 Q And there appeared to be impediments to selling the shares
12 to a third party. Do you remember that?

13 A That was my impression, but I don't remember the details.

14 Q But you recall that, don't you?

15 A I do, yes.

16 Q And you were satisfied that selling the shares to AMC was a
17 better -- was better for ASARCO than it was to sell to a third
18 party?

19 A I never made that determination. I was aware of all the
20 reasons why the transaction was proceeding as it was proceeding.
21 I was aware that they needed independent directors to
22 effectively bless a related-party transaction, and the
23 related-party transaction was going to be done if it was going
24 to be done. So I worked on fairness and solvency.

25 MR. ANTWEIL: Pull up Exhibit PX 191 for me, please, and

1 go to page 3. Now, blow the paragraph up that's highlighted.

2 BY MR. ANTWEIL:

3 Q Now, on January 27th, you had a restructuring committee
4 meeting, true?

5 A Yes, sir.

6 Q And you reviewed the factors and considerations supporting
7 the approval of the consent decree with the Department of
8 Justice and the sale of the SPCC shares to AMC on that day,
9 didn't you?

10 A We did, yes.

11 Q Among other days?

12 A Yes, we did.

13 Q And on the basis of all of the information that was
14 provided, the committee unanimously recommended to the full
15 board of ASARCO that the consent decree and the sale of the SPCC
16 shares to AMC be sold on the terms and conditions presented to
17 the committee, true?

18 A That's what it says.

19 Q Okay. And, Mr. Patton, that was the same day that
20 Mr. Larrea told you that Inbursa was requiring that the Yankee
21 bonds be paid as part of the -- part of the loan transaction,
22 wasn't it?

23 A Yes, that's the same day.

24 Q All right. You practiced corporate law for 20 years?

25 A Yes, sir.

1 Q You were a partner in a big Phoenix law firm?

2 A Yes, sir.

3 Q Was it called Streich Lang at the time?

4 A It was.

5 Q And you recognize as a lawyer who practiced in corporate
6 securities law that it's quite common for companies to form
7 single-purpose entities?

8 A Yes, sir.

9 Q Like Southern Peru Holdings Corporation?

10 A Yes.

11 Q And you understood that Southern Peru Holdings was a
12 single-purpose entity?

13 A Yes, sir.

14 Q And you knew the purpose of that company was to hold the
15 stock, Southern Peru Copper Corporation.

16 A Yes.

17 Q And in your experience as a lawyer and a businessman, you
18 didn't find anything unusual or improper about that, did you?

19 A No.

20 Q In fact, sir, there was nothing -- in your experience as a
21 lawyer and a businessman, there was nothing about the
22 organizational structure of AMC, ASARCO and Southern Peru
23 Holdings that struck you as odd or that otherwise bothered you?

24 A No.

25 Q At the time you went on the board of ASARCO and became

1 chairman of the restructuring committee, Mr. Frei was also a
2 member of the board, true?

3 A No, he joined at the same time I was --

4 Q Right.

5 A -- I did, yes.

6 Q Right. I didn't mean to suggest. At the same time?

7 A Yes, sir.

8 Q Okay. And you've served on boards before together, haven't
9 you?

10 A Yes.

11 Q Swift Transportation would be one of those?

12 A Yes.

13 Q America West?

14 A Yes.

15 Q And at the time you both joined the board of ASARCO,
16 Mr. Frei was still on the Swift Transportation board?

17 A Yes, he was.

18 Q And he was working in a full-time job as CFO and COO of
19 Autom Church Supply?

20 A That's my recollection, yes.

21 Q He got up every day and went to the office as far as you
22 knew, right?

23 A As far as I knew, yes, sir.

24 Q And that was his full-time job?

25 A As far as I know.

1 Q Mr. Frei relied on you to cover his back while you were on
2 the board, right?

3 A We both covered each other's back.

4 Q You took the lead with respect to the decisions made by you
5 and Mr. Frei, didn't you?

6 A I was the chairman of the committee. It was my job to do
7 so.

8 Q He relied on you to make decisions, true?

9 A You'd have to ask him.

10 Q Can you think of a single document in this record written by
11 Mr. Frei directly to the board of directors -- I mean directly
12 to ASARCO?

13 A Directly to ASARCO? No, I can't think of any.

14 Q Mr. Frei agreed with you about paying the Yankee bonds or
15 not paying the Yankee bonds, true?

16 A With me and Ernst & Young and Squire Sanders and, to my
17 knowledge, management, yes.

18 Q And in terms of transmitting that information to other
19 members of the committee and the board and people -- the
20 management committee at ASARCO, you took the lead to transmit
21 that information, true?

22 A That was my job as chairman.

23 Q Mr. Frei agreed with you about the decisions -- the
24 conclusions regarding reasonably equivalent value?

25 A Yes, sir.

1 Q You wrote the resignation letter?

2 A I did.

3 Q You informed Mr. Frei, after sending the resignation letter,
4 about its contents?

5 A No, sir.

6 Q You gave it to him before and he signed it, right?

7 A I gave it to him before, he reviewed it, we discussed it,
8 and then he signed it.

9 Q When you and -- when the company -- when the -- when you and
10 Mr. Frei resigned, you're the person who contacted the board and
11 told them you were resigning, true?

12 A Yes.

13 Q One of the reasons you were concerned about paying the
14 Yankee bonds was because of the requirement in the consent
15 decree that ASARCO remain in business for 12 months, and there
16 was a possibility that wouldn't happen, correct?

17 A Yes. That the payment of \$100 million of cash would deprive
18 ASARCO of the ability to stay in business for the 12 months,
19 yes.

20 Q That didn't happen, did it?

21 A It did not happen.

22 Q They lasted much longer than 12 months, didn't they?

23 A Yes.

24 Q Two-and-a-half years, in fact, right?

25 A That's what the calendar says.

1 Q You have no reason -- you don't know why ASARCO filed
2 bankruptcy, do you?

3 A I assume it filed bankruptcy because it was unable to pay
4 its debts as they became due, and it needed court supervision in
5 order to proceed.

6 Q That's an assumption, right?

7 A That's why people file bankruptcy. I've never heard of
8 another reason.

9 Q Is that an assumption, sir?

10 A I have no other reason -- no, it's not an assumption. I
11 think it's a fact, because I don't think anybody files
12 bankruptcy unless that's true.

13 Q Have you reviewed anything -- any documents filed -- you
14 haven't reviewed any documents filed in the bankruptcy that
15 talks about the reasons they needed to file, have you?

16 A No, sir.

17 Q You haven't seen the declaration of Karen Paul, for example?

18 A No, sir.

19 Q You haven't seen the advice given by Baker Botts to ASARCO
20 as to what benefits would exist -- would be available to ASARCO
21 in a bankruptcy, have you?

22 A No, sir.

23 Q You would have to speculate to know what financial pressures
24 and issues were facing ASARCO in 2005 versus 2002 and 2003?

25 A I wouldn't know what the reasons were.

1 MR. ANTWEIL: I'll pass the witness.

2 MR. SADLER: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SADLER:

5 Q Mr. Patton, I want to go back to -- just briefly to
6 something that you were just asked about, and that was this idea
7 of whether it was -- SPHC was proper or improper, and I want to
8 revisit that.

9 First of all, was it ever explained to you whether the
10 corporate formalities regarding SPHC were being observed?

11 A No, it was never explained.

12 Q Did you have any understanding of the facts of whether there
13 were meetings, whether AMC was treating it as a separate
14 corporation from ASARCO? Did you have any of those facts?

15 A I had no knowledge of that at all.

16 Q And he asked you about whether there was anything improper,
17 based on your experience as a corporate lawyer. Well, let me
18 ask you this: If SPHC were being used as part of a plan to
19 commit a fraudulent transfer, would that be a proper use of that
20 corporation?

21 A If that was the purpose, it would be an improper use.

22 Q Now, we talked a little bit yesterday about dividends, and I
23 just need to go back to that.

24 MR. SADLER: And if we could have the summary slide up,
25 please.

1 BY MR. SADLER:

2 Q Now, Mr. Antweil asked you about dividends, and I believe
3 the court had a question about dividends. I have on here a
4 slide which summarizes the dividends, and I want to just ask you
5 about 2003.

6 The evidence shows in 2003, from April going forward, that
7 the dividends paid by SPCC were \$20 million. That would be cash
8 available to ASARCO. How significant would that amount of money
9 be to the work you were doing and considering at that time you
10 were on the restructuring committee?

11 A It would be very important. It's free cash flow that we
12 would be able to use, and if -- if, in fact, we put ASARCO in
13 bankruptcy, our debts would be frozen, and we'd have this cash
14 flow to work with.

15 Q Now, last question. In this time frame that you were
16 serving, we've talked about some facts that you and Mr. Lyon and
17 others were not made aware of, and I need to go back to that one
18 last time. Were you aware that the Houlihan firm had performed
19 an analysis as to whether from a cash flow perspective ASARCO
20 would have been better off keeping SPCC versus selling it? Were
21 you ever made aware that that analysis had been done?

22 A Not at that time, no, sir.

23 Q Let's look at Plaintiff's Exhibit 79, if we can.

24 MR. SADLER: And if we could highlight that so everyone
25 can see it, including the to, from.

1 BY MR. SADLER:

2 Q Now, this is an e-mail between some Sidley lawyers in the
3 same time frame we were talking about yesterday, May 2002, June
4 2002, when Houlihan was doing some work. And I want to draw
5 particular attention to the sentences in the middle.

6 MR. SADLER: If we could highlight that from Houlihan
7 down to that other word.

8 BY MR. SADLER:

9 Q Now, this talks about Houlihan has done an analysis showing
10 the trade-off between the dividends SPCC throws off versus the
11 interest cost savings. Do you see that?

12 A Yes, sir.

13 Q What's your understanding of the interest cost savings that
14 was relevant in this time frame?

15 A Well, at the time SPCC, the shares stood as security for a
16 big loan, and the interest cost was the interest on that big
17 \$450 million loan.

18 Q All right. So first let me ask you, is the subject of
19 taking a look at whether the company, ASARCO, is better off
20 keeping SPCC, keeping the dividends versus selling it and saving
21 the interest cost, first of all, how was that a relevant factor
22 to what you were trying to decide in your work with Mr. Lyon and
23 others?

24 A It's at the very core of what our job was, which was to
25 determine whether to sell the SPCC shares at all or to go into

1 bankruptcy. So this is exactly what we were focused on. This
2 is precisely the subject we were supposed to decide.

3 Q Well, if the shares weren't sold and the company went into
4 bankruptcy, how would that have been any benefit?

5 A Well, under bankruptcy law, we would not necessarily have to
6 pay the interest, and we would receive the dividends going
7 forward so that the company could be restructured with the
8 receipt of dividends over that period. And as copper prices
9 improved, we would be able to either keep or sell SPCC later,
10 under a court supervised arrangement, and thereby restructure
11 the company.

12 Q Now, focusing on the next sentence, this talks about
13 Houlihan saying, "The transaction is cash flow positive in the
14 first year, but thereafter, ASARCO would have been much better
15 off keeping SPCC."

16 Let me ask you this: If this analysis had been presented to
17 you, how would that have made a difference in the work you did
18 on the restructuring committee?

19 A Well, it's the precise question we had to answer, and we --
20 if we had seen the Houlihan analysis, we obviously would have
21 asked E&Y to reconcile it. But this is extremely concerning,
22 because it's right on the button of what we were expected to
23 decide.

24 Q And was this information presented to you?

25 A No, sir.

1 Q To your knowledge, was it presented to Mr. Frei?

2 A No, sir.

3 Q To your knowledge, was it presented to Mr. Lyon?

4 A No, sir.

5 Q To your knowledge, was it presented to Mr. Hansen?

6 A No.

7 Q And lastly, it talks about, "Houlihan said it didn't look
8 good to have it in the" -- and I'm going to assume that means
9 "record."

10 Did this analysis make it into your record in your work on
11 the restructuring committee?

12 A No, sir. We did not get it.

13 Q Do you know why you were not provided with that analysis?

14 A The only thing I could say is the letter says it would not
15 look good.

16 MR. SADLER: That's all, Your Honor.

17 MR. ANTWEIL: Just a few follow-up, Your Honor.

18 Put back up Exhibit 79. Never mind.

19 **REXCROSS-EXAMINATION**

20 BY MR. ANTWEIL:

21 Q You know what Exhibit 79 -- we were just looking at it.

22 A The one we were just looking at?

23 Q Yes.

24 A Yes, sir.

25 Q You don't know one way or the other if Mr. Lyon received

1 that, do you?

2 A I don't have objective proof, but I know Mr. Lyon, and he
3 told me what he'd received and what he reviewed. I've worked
4 with him before, and he would not have failed to tell me about
5 this.

6 Q Do you know one -- you don't know one way or the other if
7 Mr. Lyon received this e-mail, do you?

8 A I believe he did not receive it.

9 Q Do you know one way or the other?

10 A I don't know.

11 Q Do you know one way or the other if Squire Sanders received
12 this e-mail?

13 A I feel the same about Squire Sanders. I've worked with them
14 for years. If they had received this, I would know about it.

15 MR. ANTWEIL: Okay. Pass the witness.

16 MR. SADLER: Your Honor, we have some exhibits that
17 we'll go ahead and offer at this time. And this follows on the
18 list that's in the front of the notebook that we handed up
19 yesterday.

20 At this time, plaintiffs would offer Exhibit 162 -- and I'm
21 going to skip over some of these on the list, Your Honor,
22 because they already came out through Mr. Hansen.

23 But starting with the list, we offer 162, Plaintiff's
24 Exhibit 214, Plaintiff's Exhibit 7, Plaintiff's Exhibit 82,
25 Plaintiff's Exhibit 93, Plaintiff's Exhibit 195, Plaintiff's

1 Exhibit 6, Plaintiff's Exhibit 96, Plaintiff's Exhibit 217,
2 Plaintiff's Exhibit 212, Plaintiff's Exhibit 220, Plaintiff's
3 Exhibit 225, Plaintiff's Exhibit 237, Plaintiff's Exhibit 243,
4 Plaintiff's Exhibit 245, Plaintiff's Exhibit 445, Plaintiff's
5 Exhibit 928, Plaintiff's Exhibit 252, Plaintiff's Exhibit 257,
6 Plaintiff's Exhibit 84, Plaintiff's Exhibit 89, Plaintiff's
7 Exhibit 332, Plaintiff's Exhibit 1046, Plaintiff's Exhibit 229,
8 Plaintiff's Exhibit 231, Plaintiff's Exhibit 936, Plaintiff's
9 Exhibit 1370, Plaintiff's Exhibit 1369, Plaintiff's Exhibit 171,
10 Plaintiff's Exhibit 79, Plaintiff's Exhibit 159.

11 We also offer Plaintiff's Exhibit 1066. We are offering
12 that under seal, because it deals with privileged and
13 confidential issues related to monetization of certain insurance
14 policies. And that -- that is our offer of the exhibits, Your
15 Honor.

16 MR. ANTWEIL: Your Honor, I've got several objections.
17 I'll go one at a time, if that's okay.

18 THE COURT: All right.

19 MR. SADLER: And I missed -- if I could clarify. I
20 misspoke. I said Plaintiff's Exhibit 445. We're not offering.
21 That's actually a Defendant's Exhibit. I misspoke, Your Honor.

22 MR. ANTWEIL: Starting with Exhibit 93, Your Honor,
23 there's no foundation. I don't think this witness has ever seen
24 this document before.

25 MR. SADLER: Your Honor, I thought we took care of

1 foundation objections when we argued the exhibits; but if we
2 didn't, I'll just address these, because I anticipate there's
3 going to be several objections.

4 If I showed Mr. Patton a document which he had never seen
5 before for the purpose of proving he had never seen it because
6 the relevance is this is information he should have seen and
7 didn't, I think I've laid the only foundation possible, and
8 there's no other objection to it.

9 So I think if we're going to have multiple objections based
10 on foundation because Mr. Patton has never seen the document
11 before, it's really a pointless objection. The point is, he
12 hadn't seen it before, and that's the only way to prove it.

13 THE COURT: Hold on just a second.

14 Okay. I'm going to admit 93 for that purpose.

15 MR. ANTWEIL: Okay. Plaintiff's Exhibit 6, Your Honor,
16 which are the redacted Goldman Sachs documents. Not only has
17 this witness never seen it before, but there's no document --
18 there's nothing that connects this document to any party in this
19 case. It just lacks any foundation whatsoever.

20 THE COURT: Hold on. I don't have a six.

21 MR. SADLER: It's under Tab 10 in the notebook, Your
22 Honor.

23 THE COURT: Oh, I'm sorry. I do have it, okay.

24 Okay. What is the plaintiff's position on 6?

25 MR. SADLER: Your Honor, the plaintiff's position on

1 Plaintiff's Exhibit 6, 96, 332, 1046, these all deal, again,
2 with the issue of presenting information to Mr. Patton that we
3 contend he should have been made aware of that he wasn't. So
4 that is the foundation for them.

5 What these documents show is evidence of ownership of the
6 bonds, consistent with the statement Mr. Patton testified to,
7 that Mr. Hansen testified to that Genaro Larrea said that
8 Inbursa owned the bonds; that an entity of Slim owned the bonds.
9 So this is proof that those two entities, in fact, owned the
10 bonds, so there's a foundation.

11 The other foundation is, I've established through lengthy
12 testimony of Mr. Patton that that would have been important,
13 relevant information that he, as a board member of ASARCO,
14 should have gotten. And he wasn't aware of it.

15 And so that's the significance of it, and that's why all of
16 these exhibits regarding the ownership of the bonds that prove
17 who owned the bonds at the time of the transaction are being
18 offered.

19 MR. ANTWEIL: May I respond?

20 THE COURT: Yes.

21 MR. ANTWEIL: Your Honor, there's no evidence that
22 anybody at AMC or Grupo Mexico knew about these statements any
23 more than Mr. Patton did. And Mr. Patton didn't testify that
24 Mr. Larrea told him that anybody owned the bonds. He testified
25 that there had been situations in the past where the loan -- a

1 lending relationship in the past where there had been some
2 financial arrangement similar.

3 So these statements absolutely show nothing about anything.
4 I mean, they are -- they are third-party documents that have
5 nothing to do with anything with AMC, Grupo, or anybody else.

6 THE COURT: Other than the fact they're third-party
7 documents, have they been proven up as far as being business
8 records?

9 MR. SADLER: Yes, sir.

10 MR. TERRELL: Yes.

11 THE COURT: All right. I'm going to admit them for what
12 they -- what they show and for the purpose that the witness
13 never saw them.

14 MR. SADLER: Yes, sir. Thank you.

15 MR. ANTWEIL: I think that may be all. Let me check.

16 THE COURT: Mr. Antweil, their relevance may be
17 something we argue about all the way through the trial.

18 MR. ANTWEIL: I understand. I'm just making sure there
19 weren't any other ones other than the three we just talked
20 about.

21 Your Honor, we object to 229. I don't think this witness
22 even talked about it.

23 MR. SADLER: That's under Tab 33, Your Honor.

24 MR. ANTWEIL: Keeping with your order, I'll say --

25 MR. SADLER: Again, this document is offered for a

1 similar purpose. The foundation was laid in his testimony.
2 You'll recall the testimony both from Mr. Hansen and Mr. Patton
3 that Mr. Larrea proposed that there be a monetization of
4 insurance policies in order to pay off these Yankee bonds.
5 Mr. Patton testified he was not aware of that. He was not
6 explained the details of that, didn't have an understanding of
7 that. And these documents are relevant to his testimony
8 because, again, they show that decisions were being made outside
9 of Mr. Patton's knowledge about the monetization of the
10 insurance policies.

11 And so it's relevant to his testimony, and I understood from
12 Your Honor's prior order that we offer documents that are
13 relevant to the witness' testimony. And again, this is
14 establishing a fact that he's testified he was not aware of it.

15 MR. ANTWEIL: Your Honor, my recollection was your order
16 said you would -- made relevant by the testimony of a witness,
17 and this witness didn't talk about this document at all.

18 THE COURT: Yeah. I'm going to not admit it. I'm not
19 saying you can't admit it later with a different witness, but
20 I'm not admitting it now.

21 MR. SADLER: Well, and I'm not arguing the court's
22 ruling, Your Honor, but in the interest of time, I did not put
23 this document up and ask Mr. Patton, "Had you ever seen this
24 document?" But I can do that, and in 30 seconds of testimony,
25 we can have him say what we all acknowledge, which is, this

1 document was never made available to him. These facts were
2 never made available to him.

3 And I'd assume that consistent with Your Honor's prior
4 rulings, you would then allow the document for that purpose. So
5 may I be allowed to do that?

6 THE COURT: Go ahead.

7 MR. SADLER: Could we have, please, Plaintiff's
8 Exhibit 229. Can we put that up? And if we could highlight or
9 enlarge, if we can. First, we need to see the to-from, please.

10 All right. This is a memo being presented to Mr. German
11 Larrea, February 11, 2003.

12 **REDIRECT EXAMINATION**

13 BY MR. SADLER:

14 Q Were you on the restructuring committee at this time?

15 A I was.

16 Q All right.

17 MR. SADLER: Can we go to the signature to show who sent
18 it?

19 You went one page too far. Please go back.

20 There we go. One more back. You're too quick. There we
21 go. Highlight who it was sent by. Sent by Mr. Daniel
22 Tellechea.

23 BY MR. SADLER:

24 Q Is this the same Mr. Daniel Tellechea that you were sending
25 and copying on e-mails in this time frame about your work on the

1 restructuring committee and your concerns?

2 A Yes, sir.

3 Q All right. Now, let's go back to the first paragraph.

4 Now, you testified on direct that Mr. Genaro Larrea had
5 brought to your attention this idea of monetizing an insurance
6 receivable in order to help pay off the Yankee bonds.

7 MR. SADLER: And if we could highlight, please, the
8 first three lines.

9 BY MR. SADLER:

10 Q And he's talking about -- Mr. Tellechea is talking about
11 that there's a creditor who slapped liens on a recovery from INA
12 insurance and the SPCC shares. Do you see that?

13 A Yes, sir.

14 Q Had anybody informed you in this time frame, first, that
15 another creditor had run off and slapped a lien on the very SPCC
16 shares that you and the committee were studying whether to sell?

17 A I don't recall, but I don't think so.

18 Q Had anybody told you -- had Mr. Larrea told you that there
19 was a monetization of an insurance recovery that was planning to
20 be used to pay off the Yankee bonds that also had a lien slapped
21 on it?

22 A No, sir.

23 Q Was this relevant information that should have been
24 presented to you and explained why if it was?

25 A Yes, sir.

1 Q Why?

2 A Well, this is, again, relevant to the use of the assets of
3 ASARCO, including this insurance policy that, at the time, we
4 just had a -- he just had listed it as something that would be
5 sold, and we certainly hadn't agreed to sell it.

6 We need to understand this whole transaction and work it
7 into the cash flow, so we needed to know what was happening.

8 Q Why was it relevant to your decision whether to approve the
9 SPCC sale? Why was it relevant that another creditor had a lien
10 on it?

11 A Well, in order to sell something, you have to have it free
12 of liens.

13 Q Do you know why all of this information was not presented to
14 you?

15 A I do not.

16 MR. SADLER: That's all I have on this.

17 THE COURT: All right. Looking at -- Counsel, looking
18 at this, I'm looking at the last four digits, 1503, 1504, 1505,
19 and 1506. I assume, given the affidavit of accuracy, that this
20 is a translation --

21 MR. SADLER: Yes, sir, it is.

22 THE COURT: -- of the actual document which precedes it,
23 starting on AMC, last four digits, 1503? In other words, the
24 document, in Spanish, is in front of it.

25 MR. SADLER: Yes. That's correct, Your Honor. I don't

1 believe there's any dispute that this is an accurate
2 translation. There's been no objection lodged on that basis.

3 THE COURT: All right. I'll admit it for the same
4 purpose I admitted the other documents.

5 MR. SADLER: Thank you.

6 MR. ANTWEIL: That's all I had, Your Honor.

7 THE COURT: The court will admit Plaintiff's Exhibit --

8 MR. NEWTON: Your Honor, the subsidiary committee has
9 some objection to the motion -- to the request to seal. You
10 said you wanted to take those up during the course of the trial.

11 THE COURT: Let me -- I'm going to admit it, and then
12 let me look at it, and we'll talk about sealing it.

13 MR. NEWTON: Okay.

14 THE COURT: All right. I'm going to admit 162 -- this
15 is Plaintiff's Exhibits 162, 214, 7, 82, 93, 195, 6, 96, 217,
16 212, 220, 225, 237, 243, 245, 928, 252, 257, 84, 89, 332, 1046,
17 229, 231, 936, 1370, 1369, 171, 79, 159, and 1066.

18 MR. SADLER: Thank you, Your Honor.

19 THE COURT: Now, did I skip any? Because if I did --

20 MR. SADLER: No, sir.

21 THE COURT: -- I think there was some of the list. I
22 don't think you offered the other ones.

23 And were there any being offered by the defendant with this
24 witness?

25 MR. SADLER: I do have one other thing. And I'll speak

1 after Mr. Antweil.

2 MR. ANTWEIL: No, go ahead.

3 MR. SADLER: I've now been alerted that I have misspoke
4 about misspeaking, that I was supposed to offer Defendant's
5 Exhibit 445. So I will now offer Defendant's Exhibit 445.

6 THE COURT: Any objection, Mr. Antweil?

7 MR. ANTWEIL: No.

8 THE COURT: All right. That will be admitted as well.

9 MR. ANTWEIL: I want to make sure I'm not covering the
10 same ground you are, so stay here for a second.

11 MR. SADLER: Sure. I did offer some -- I'm sorry, Your
12 Honor --

13 MR. ANTWEIL: Yes, that's what I'm --

14 MR. SADLER: -- some of the ones you used.

15 MR. ANTWEIL: Your Honor, I'm trying to make this quick,
16 so I was talking to counsel about -- I don't want to readmit --
17 reoffer stuff that's been offered.

18 MR. SADLER: Did you offer 220?

19 THE COURT: Now, in my notebook -- while you're looking
20 at that, in my notebook, do I have a copy of the document you
21 wish sealed?

22 MR. SADLER: Yes, Your Honor. The 1066 is under Tab 35.

23 THE COURT: Okay. All right. And I'll look at that,
24 and we can come back maybe after a break and talk about the seal
25 issue.

1 MR. ANTWEIL: I don't think we have any, Your Honor.

2 THE COURT: Okay.

3 MR. SADLER: May Mr. Patton be excused, Your Honor?

4 THE COURT: Yes.

5 MR. SADLER: Thank you.

6 THE COURT: Thank you, sir.

7 MR. TERRELL: Your Honor --

8 THE COURT: Go ahead, Mr. Terrell.

9 MR. TERRELL: I don't want to interrupt you. Before we
10 call our next witness, I need a point of clarification of you,
11 and it's about this matter of offering an exhibit that is
12 relevant to a witness' testimony when the witness doesn't
13 testify about it.

14 I had mentioned to you at our pretrial hearing on April 30,
15 that there will be a very -- I'm quoting from the transcript:
16 "There will be a very limited number of documents that we did
17 not ask the witness about that particular document; however,
18 witnesses will be asked about that subject. And when that
19 subject is raised at that time, we want to offer those
20 documents."

21 And Your Honor said, "Well, if they're relevant to the
22 testimony, I'm okay." And you pointed out that your April 24th
23 order was crafted carefully so that they had to be relevant to
24 some witness' testimony.

25 THE COURT: Well, it's kind of hard for me to just leap

1 to the relevance when the relevance is the witness hasn't seen
2 it.

3 MR. TERRELL: That's fine.

4 THE COURT: So, I mean, it's obvious if he's testified
5 about, Your Honor, the price of copper and this is a document
6 about the price of copper, then I understand that. It was a
7 little harder, since the relevance was: I never saw it.

8 MR. TERRELL: And I'm not being in any way critical. I
9 just want to tell you our understanding of how we're going to
10 proceed; that's all I'm saying.

11 And at this time, Your Honor, we're prepared to proceed with
12 Mr. McCaffrey's video deposition. I thought I would preview for
13 you what we're going to do the rest of this morning and early
14 afternoon.

15 We're going to first play the video deposition of
16 Mr. McCaffrey. It's a total of 44 minutes, 27 minutes offered
17 by plaintiffs, 17 minutes offered by defendant. There's 24
18 seconds in common.

19 Then we're going to offer the video deposition of Mr. Jim
20 O'Neil, and that is a total of one hour and eight minutes, with
21 29 minutes offered by plaintiffs, 39 minutes offered by
22 defendant, three minutes in common.

23 And after that, we're going to offer the video deposition of
24 Mr. Genaro Guerrero. That's a total of 13 minutes, 11 minutes
25 from plaintiffs, one minute from defendant, and one minute in

1 common.

2 So basically -- and then we're going to offer some written
3 depositions as well. Basically what I'm advising the court of
4 is that we're going to play depositions probably the rest of
5 this morning, and then after lunch, we're going to call Mr. Al
6 Frei live. That's our plan.

7 THE COURT: Okay. Good.

8 MR. TERRELL: And with respect to Mr. McCaffrey, there
9 are no exhibits, and so all I have to offer, Your Honor, will be
10 the -- will be the transcript, one for you and one for your law
11 clerk, and then one for the reporter who gets a break, one for
12 AMC. And we'll be ready to proceed once we get that set up.

13 MR. COHEN: And our only comment on proceeding with
14 respect to exhibits, I think it's particularly relevant with the
15 video depositions. What we've done is looked at the plaintiff's
16 offer and defendant's offer of exhibits, and we may have
17 specific objections, but I think we're on the same page: If the
18 document is relevant to the testimony, it should come in. If
19 the witness has not testified as to the document or the subject,
20 we could deal with those objections one at a time, I think.

21 THE COURT: Okay.

22 MR. TERRELL: Thank you, Your Honor.

23 (Video deposition of Kevin McCaffrey playing.)

24 MR. TERRELL: Your Honor, the next deposition is the one
25 hour and eight minute deposition of Jim O'Neil.

1 THE COURT: Tell you what. Let me take about a ten
2 minute break. We'll come back and listen to that.

3 (Recess)

4 THE COURT: All right. Be seated, please.

5 MR. RODRIGUEZ: Your Honor, plaintiffs --

6 THE COURT: Hold on just a second.

7 MR. RODRIGUEZ: Okay.

8 THE COURT: Let me go back to Plaintiff's Exhibit 1066,
9 which is the one that we had a question of sealing.

10 Mr. Terrell, tell me why this needs to be sealed. I mean, I
11 see there -- clearly this is the results of some negotiations
12 with insurance companies and settling, but it's all like five
13 years ago.

14 MR. TERRELL: I understand that. My understanding of
15 this, but I'll be corrected by someone, I hope, if I'm wrong,
16 like Fernando, is that the insurance counsel for ASARCO, who's
17 litigating with the insurance carriers, is concerned about the
18 disclosure of this. And it's protected -- I'm sorry. And it's
19 protected by non-disclosure agreements with the insurance
20 carriers. So it's actually -- may I consult with someone?

21 (Discussion off the record)

22 MR. TERRELL: I'm sorry. These are settlements with
23 insurance companies, and they're protected by a non-disclosure
24 agreement. And the insurance companies and ASARCO, because
25 they're privileged, do not want the asbestos plaintiffs to get

1 it for fear that this will cause some sort of admission or
2 something against them in the litigation between ASARCO and the
3 asbestos plaintiffs.

4 THE COURT: Well, but, I mean, we've sat here in open
5 court and talked about monetizing insurance policies, and that's
6 what this is.

7 MR. TERRELL: And, Your Honor, I'm not trying to --
8 well, let me think about how I say this. I understand what Your
9 Honor is saying. I've been asked to put this under seal, and
10 I've made that request.

11 THE COURT: Okay. And your objection to it is?

12 MR. NEWTON: Well, it's exactly what you said, Your
13 Honor. We've discussed this in open court. This is a
14 bankruptcy case that was transferred here just because of Judge
15 Schmidt's heavy docket, so you're, in effect, acting as a
16 bankruptcy court.

17 Anything that the plaintiffs rely on here, we, as an
18 Official Committee of Unsecured Creditors, are certainly
19 entitled to see. We're an entity created by the bankruptcy
20 court and subject to the bankruptcy court rules. We'll, of
21 course, abide by anything Judge Schmidt imposes on us in regards
22 to keeping this confidential or another non-disclosure, but
23 we're certainly entitled to see this.

24 MR. BATTAGLIA: And, Your Honor, Ray Battaglia for
25 Robert Pate, the future claims representative. I would only add

1 that the debtor has itself sued any number of its insurance
2 carriers to avoid these settlement deals as fraudulent
3 conveyances. And I don't know whether this particular
4 settlement is one of those lawsuits or not, but this is exactly
5 the kind of information that's going to be evidence concerning
6 the assets and the liabilities of the estate.

7 THE COURT: I don't think it's fresh enough to be an
8 asset and liability. I mean, to me, this information -- let me
9 think about this, but I -- I think we're fighting -- and I know
10 why the plaintiffs, if they have contractual agreements, you
11 know, are forced to argue this. But, I mean, all of this
12 information is at least five years old, some of it seven or
13 eight-years-old, and it's nothing that anybody doesn't know
14 other than maybe specific amounts with specific insurance
15 companies.

16 All right. Well, I'm going to think about it some more, but
17 my inclination, unless somebody talks me out of it is -- or
18 unless somebody suggests important redactions is to not seal
19 this. I mean, if there are certain things that I don't -- I'm
20 not trying to hurt the debtor. If there's certain things in
21 here that actually hurt him other than general, "We agreed when
22 we settled these things not to let anybody know about this," but
23 it's pretty benign.

24 MR. TERRELL: We'll look at it carefully at lunch; and
25 if there's anything to add to that argument, we'll do so after

1 lunch. Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. TERRELL: Mr. Rodriguez will handle the video
4 deposition of Mr. Jim O'Neil.

5 MR. RODRIGUEZ: Your Honor, we have some binders to
6 present to the court for the video deposition of Mr. James
7 O'Neil from 2008. Mr. O'Neil was the vice-president of finance
8 and administration for ASARCO.

9 The total time for the video is one hour and eight minutes,
10 and we've agreed with counsel for AMC that the division will be
11 29 minutes for plaintiffs and 39 minutes for AMC. And at the
12 end, we will take up the offering of seven exhibits for
13 plaintiffs, and defendants may have exhibits as well.

14 THE COURT: Let me say again on that other, on that
15 exhibit to the intervenors, that y'all are almost in the
16 opposite position or just in the opposite position. I don't
17 mean saying we don't want it sealed; they want it sealed. But,
18 I mean, I don't see that it's going to be helpful for y'all
19 either. I mean, there's nothing in it. But you're in the
20 position of saying, well, we haven't seen it so, you know, we
21 can't necessarily agree.

22 But I just -- for a lot of these things, I know you --
23 you're worried about something that you've agreed contractually
24 to hold it confidential or you've agreed that it's privileged,
25 and the last thing you want to do is let the horse out of the

1 barn because once it's out, you can't put it back in. But, you
2 know, it's almost like I'd like to take y'all outside in the
3 back and say, "Here, read this. This is -- we're arguing over
4 nothing."

5 Okay. Go ahead.

6 (Videotaped deposition of James T. O'Neil, Junior)

7 MR. RODRIGUEZ: Your Honor, in connection with the
8 deposition of Mr. O'Neil, plaintiffs offer Plaintiff's
9 Exhibit 68, 183, 207, 247, 824, 887, and 1056.

10 MR. COHEN: No objection.

11 THE COURT: All right. They'll be admitted. Anything
12 from the defendants?

13 MR. COHEN: None, Your Honor.

14 THE COURT: Okay. Are we ready for Genaro? Can I
15 hear -- if it's just 12 minutes, can we go ahead and do that
16 now?

17 MR. RODRIGUEZ: Before we reach him, really quick, we do
18 have a written submission of Mr. O'Neil from his deposition in
19 2002. It's not a video that we're going to play, but we're
20 offering his testimony from his deposition in 2002 along with
21 two exhibits, PX 651 and PX 649.

22 MR. COHEN: No objection.

23 THE COURT: All right. The court will --

24 MR. RODRIGUEZ: So we'll just provide the court with the
25 binders of the testimony and the exhibits.

1 THE COURT: All right.

2 MR. TERRELL: We're happy to play Mr. Guerrero now if
3 you'd like.

4 THE COURT: Why don't we go ahead and -- if it's just 12
5 minutes, let's play it and then take our lunch break, and we'll
6 come back and hear from the live witness.

7 MR. RODRIGUEZ: These are the binders for Genaro
8 Guerrero.

9 MR. TERRELL: Your Honor, may I be excused for one
10 minute and I'll be right back?

11 THE COURT: You may.

12 If you're ready, I'm ready. I figure Mr. Terrell has heard
13 it before.

14 (Videotaped deposition of Genaro Guerrero playing)

15 MR. RODRIGUEZ: Your Honor, in connection with the
16 deposition of Genaro Guerrero, plaintiffs offer Plaintiff's
17 Exhibits 40, 193, and 1055.

18 MR. COHEN: No objection, Your Honor.

19 THE COURT: All right. Those will be admitted.

20 MR. RODRIGUEZ: Your Honor, you may recall that during
21 the April 1st hearing that we had telephonically, Mr. Terrell
22 raised the issue that for some video depositions, we would also
23 submit short written submissions from the same deposition to
24 support the admission of additional exhibits. This is the first
25 example we have of that.

1 We offer in the notebook. Behind tab B, there are two
2 approximately pages of the deposition of Mr. Genaro Guerrero
3 that support the admission of the six exhibits that follow it,
4 and those exhibits are Plaintiff's Exhibits 27, 607, 608, 47,
5 48, and 620. And plaintiffs offer this testimony and those
6 exhibits as a written submission at this time.

7 MR. COHEN: We have no objection to the admission of the
8 exhibits. I think those documents relate to what we've already
9 seen. I have not taken a look at the testimony. Is that --

10 THE COURT: All right. The exhibits will be admitted
11 then. And why don't you look at this while we take a lunch
12 break. And if you have something you want to complain about the
13 testimony, you can come back and let me know after lunch.

14 MR. COHEN: Thank you. I appreciate that.

15 THE COURT: All right. Let's come back -- it's
16 1:00 now. Let's come back about -- let's say 2:15. Start at
17 2:15. Thank you.

18 * * *

19 (End of requested transcript)

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above matter.

Date: May 13, 2008

/s/ _____
Signature of Court Reporter
Barbara Barnard

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

ASARCO LLC AND SOUTHERN PERU)
HOLDINGS CORPORATION)
)
VS.) CIVIL ACTION NO.
) B-07-018
)
AMERICAS MINING CORPORATION)

JURY TRIAL
BEFORE THE HONORABLE ANDREW S. HANEN
MAY 13, 2008
AFTERNOON SESSION

1 THE COURT: All right. Be seated, please.

2 Okay. Earlier when I was suggesting some briefing that
3 would be helpful, my trusty sidekick over here passed me a note,
4 and I forgot to mention it, that when I was talking about burden
5 of proof, that actually applies to the fraudulent transfer claim
6 as well, because there's some suggestion in the briefs by AMC
7 that that should be clear and convincing, a standard higher than
8 preponderance of the evidence.

9 MR. TERRELL: And, Your Honor, we'll brief that as well.
10 We disagree with that, but we'll be back in touch with you
11 within the next few days.

12 MR. ANTWEIL: We'll look at it, Your Honor.

13 THE COURT: That's an important issue.

14 MR. ANTWEIL: Oh, absolutely.

15 THE COURT: Who's got to prove what and by what
16 standard.

17 MR. ANTWEIL: Your Honor, just briefly. I have a
18 response to the trial brief filed yesterday by plaintiffs, and I
19 wanted to just hand that up to the court.

20 MR. TERRELL: Thank you. Appreciate it.

21 THE COURT: Okay. All right. Let me --

22 MR. TERRELL: Yes, sir.

23 THE COURT: We had the few pages or maybe just two pages
24 of deposition excerpts. Was there any problem with that?

25 MR. COHEN: No, Your Honor, we had no objection.

1 THE COURT: All right. Then they'll be admitted, too.

2 MR. TERRELL: Your Honor --

3 THE COURT: Hold on just a second.

4 MR. TERRELL: I'm sorry.

5 THE COURT: That's Genaro Guerrero's deposition pages
6 that were submitted, attached to the exhibits.

7 Okay.

8 MR. TERRELL: I apologize, Your Honor. I'd like to
9 speak just a moment to Exhibit 1066 just because if I don't,
10 then I'll forget it. It's what Your Honor had asked me to look
11 at.

12 I have looked at it and I've talked to people. We do
13 believe that the whole thing should be sealed. But even if all
14 of it isn't sealed -- and we are subject to a confidentiality
15 agreement with the insurance company as to all of it. But even
16 if all of it is not sealed, the last four entries on it for 2003
17 are all current subjects.

18 I'll wait until you get a copy of it. It's 1066.

19 THE COURT: I know, but I'm afraid I handed my copy
20 back. Okay.

21 MR. TERRELL: I apologize. The last four entries at the
22 bottom of the page for 2003 and over to the top of the next page
23 are current subjects of adversary proceedings between us and the
24 asbestos plaintiffs. So the problem is that it discloses the
25 amount that the insurance company paid us, and some

1 irresponsible plaintiff might argue that they ought to at least
2 get that much. And that's -- that's our --

3 THE COURT: Maybe some responsible one.

4 MR. TERRELL: Well, I was being in jest, because I know
5 Your Honor knew I'm not calling anyone irresponsible. But that
6 is the fear, as I appreciate it from defense counsel in the
7 adversary proceeding, that they don't want to show any cards to
8 the asbestos plaintiffs.

9 As to the others that are above it, none of those, as I
10 understand it, are subject to adversary proceedings, and Your
11 Honor is correct, they are old. But, again, they're subject to
12 an insurance agreement, so I have to make my request to those as
13 well.

14 THE COURT: All right. Let me think about that and I'll
15 rule on it.

16 MR. TERRELL: Yes, sir.

17 Your Honor, at this time plaintiffs call Mr. Al Frei as a
18 live witness.

19 THE COURT: All right.

20 Mr. Frei, if you will take the stand, please, sir. Right up
21 here.

22 Cristi, if you'd swear Mr. Frei in.

23 (Witness sworn)

24 MR. TERRELL: Your Honor, I'm going to hand up two books
25 as our exhibits. Mercifully there are not many.

1 And when Your Honor is ready, I'll proceed.

2 THE COURT: I'm ready.

3 ALPHONSE FREI,

4 the witness, having been first duly cautioned and sworn to tell
5 the truth, the whole truth and nothing but the truth, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. TERRELL:

9 Q Please state your name, sir.

10 A My name is Alphonse E. Frei.

11 Q Are you called Al Frei?

12 A Yes.

13 Q F-R-E-I?

14 A F-R-E-I.

15 Q Mr. Frei, what was your affiliation with ASARCO?

16 A I was an independent director.

17 Q From what period of time?

18 A From October 2002 until March 26, 2003.

19 Q Did you resign from that position?

20 A Yes, I did.

21 Q Did you resign before or after the SPCC transfer?

22 A I resigned before the transfer.

23 THE COURT: Wait just a minute.

24 (Brief discussion off the record.)

25 THE COURT: Okay. Thank you.

1 Go ahead.

2 MR. TERRELL: Yes, sir.

3 BY MR. TERRELL:

4 Q Mr. Frei, looking at your own experience prior to coming on
5 board with ASARCO, what experience did you have then or have you
6 had since being an officer of a company?

7 A Well, I was the assistant treasurer of Continental Airlines
8 for a number of years. I was the chief financial officer of
9 America West Airlines for ten years. Subsequent to that I
10 served as COO and CFO for Autom Church Supply, and currently I'm
11 consulting CFO for Modern Industries.

12 Q Other than serving as an independent director of ASARCO,
13 have you served as a director on other boards?

14 A Yes, I have. I served on America West Airlines board. I
15 served for 17 years on Swift Transportation Company board from
16 the time they went public until they went private in May of last
17 year. I'm currently serving on Science Care as a private
18 company. I'm also serving on Fairytale Brownies, Gordon C.
19 James Public Relations and Merchants Information Solutions.

20 Q Prior to your time at ASARCO, had you ever served on any
21 other restructuring committee?

22 A Yes, I served on the restructuring committee of America West
23 Airlines.

24 Q Could you tell Judge Hanen something about that experience
25 that might inform your experience here at ASARCO?

1 A Well, America West Airlines filed for Chapter 11 bankruptcy
2 protection in June of 1991 and was in bankruptcy for three
3 years.

4 Q And for how long did you serve on that restructuring
5 committee?

6 A For two-and-a-half years.

7 Q And part of that during its time in bankruptcy?

8 A Yes, during its time in bankruptcy.

9 Q When you joined ASARCO's board in October 2002, what did you
10 understand your role would be at ASARCO?

11 A Well, I understood the fact that ASARCO was a company that
12 was in some financial stress and that there was a possibility
13 that Chapter 11 would be in order for ASARCO, and, therefore, my
14 restructuring experience at America West Airlines would be
15 beneficial.

16 Q At the time you joined the board of ASARCO and its
17 restructuring committee, did you have any affiliation whatsoever
18 with Grupo Mexico, Americas Mining, or the Larrea family?

19 A No, none whatsoever.

20 Q Now, I want to turn your attention to the events.

21 MR. TERRELL: And, Your Honor, the parties have
22 stipulated that the first restructuring committee meeting
23 occurred on October 14, 2002.

24 BY MR. TERRELL:

25 Q And, Mr. Frei, I want you to turn your attention, if you

1 would, to this question. What information were you provided
2 about ASARCO's financial condition either before this first
3 meeting on October 14, 2002, or at that first meeting?

4 A Well, I recall that Grant Lyon from Ernst & Young had
5 presented a financial presentation or overview to us, and it
6 outlined the fact that there was a substantial amount of senior
7 debt that was coming due in November, a substantial amount of
8 other debt that was coming due, and that the cash position
9 created holes that were existing in 2002 and 2003 without any
10 indication of a way to fill them.

11 Q As you gained information about ASARCO's financial
12 condition, did you, in the beginning, form an opinion or at any
13 point about what ASARCO should do?

14 A Well, I thought fairly early on that ASARCO should file
15 Chapter 11 bankruptcy because I had been through that at America
16 West and it seemed like an appropriate way to restructure a
17 company that was in financial trouble.

18 Q Now, had you made up your mind about that, or were you
19 willing to accept information that could change your mind?

20 A Well, I was certainly willing to accept information that
21 would be presented that could change that opinion.

22 Q All right, sir. When you resigned from the restructuring
23 committee of ASARCO on March 26, 2003, did you have an opinion
24 then as to whether ASARCO should take bankruptcy?

25 A My opinion at that time was that they definitely should take

1 bankruptcy.

2 Q And should they take bankruptcy, having already transferred
3 SPCC to AMC, or should they take bankruptcy taking SPCC into
4 bankruptcy with them?

5 A Well, at that time I thought they should take bankruptcy
6 taking SPCC with them into bankruptcy for an orderly transition.

7 Q From your perspective, why was ASARCO not put into
8 bankruptcy during your time on the restructuring committee?

9 A Well, when I first -- when it first came up, Mr. Larrea had
10 indicated to us that bankruptcy in Mexican culture was a stigma.
11 But subsequent to that, I found out that in my opinion, there
12 was a deeper reason, which was the fact that Grupo did not want
13 to give control up of SPCC.

14 Q During this period of time that you were on the
15 restructuring committee from, I believe you said, October until
16 March 26, 2003, did you have an opinion as to whether ASARCO was
17 insolvent or not?

18 A Well, I thought they were insolvent from very early on
19 because they weren't able to pay their bills.

20 Q Now, did you feel you had adequate knowledge of your own to
21 have an opinion, given your history as a chief financial
22 officer?

23 A Well, I relied on Ernst & Young's presentations, and those
24 showed great gaping holes that confirmed that they had financial
25 stress.

1 Q Now, I'd like to ask you this: When you joined the board,
2 were you asked to negotiate the terms of the SPCC transfer, or
3 were those terms already set in place?

4 A When I joined the board, I was not asked to negotiate. In
5 fact, they were set in place. As I recall, Grupo had indicated
6 a \$765 million settlement in consideration for the transfer.

7 Q Were you ever given the option by Grupo Mexico to put the
8 company into bankruptcy?

9 A No.

10 Q Were you ever given the option by Grupo Mexico to try to
11 sell the company, sell SPCC at an auction?

12 A No.

13 Q Sir, I want to show you what has been marked as Plaintiff's
14 Exhibit 191, and I'm going to put this on the screen.

15 MR. TERRELL: Your Honor, this is something that you've
16 seen before with Mr. Patton.

17 THE COURT: Mr. Frei, is that screen on?

18 THE WITNESS: This screen's on.

19 THE COURT: Is it on?

20 THE WITNESS: Yes, it is.

21 BY MR. TERRELL:

22 Q And also, Mr. Frei, I put the exhibits there in front of
23 you. If you need them, they're in the book as well, and it'll
24 be the first tab.

25 MR. TERRELL: And I've given counsel for defendant the

1 same thing.

2 BY MR. TERRELL:

3 Q If you will look at Plaintiff's Exhibit 191, this appears to
4 be the January 27, 2003, restructuring committee meeting
5 minutes. And, in particular, I want you to turn your attention
6 to an item on page 3 that we've highlighted.

7 And this highlighted portion is: "On the basis of all of
8 the foregoing, the committee unanimously recommended to the full
9 board of ASARCO that the consent decree and the sale of the SPCC
10 shares to AMC on the terms and conditions presented to the
11 committee be approved."

12 Now, first I want to ask you, do you recall this meeting?

13 A Yes, I do.

14 Q Do you recall casting this vote?

15 A Well, I recall the fact that we were recommending to the
16 board that SPCC shares be considered for approval, but it was a
17 conditional approval based on the fact that we needed to have
18 verification from -- particularly Ernst & Young to confirm that
19 the -- as I recall, the DOJ's consent decree required 12 months
20 or more of viability of ASARCO, and we had to have that given to
21 us in -- from our financial advisers.

22 Q So was this approval an unconditional approval on your part?

23 A No, it was a conditional approval.

24 Q What more did you have to know?

25 A Well, we needed to see financial projections that would be

1 screened by Ernst & Young and confirmed to us that there was
2 viability for ASARCO to operate for more than a year without any
3 financial stress.

4 MR. TERRELL: I think I stepped on something. I
5 apologize, Your Honor. I hope I didn't -- I did. Sorry. But I
6 don't think it's broken. It's a miracle.

7 THE COURT: Courtroom will fill with marshals here in a
8 minute.

9 MR. TERRELL: They'll never take me alive.

10 BY MR. TERRELL:

11 Q Mr. Frei, again, looking at this January 27 meeting and
12 calling it up in your mind, do you remember Mr. Genaro Larrea
13 making comments about the Yankee bonds at this meeting?

14 A Yes, I do.

15 Q What did he say?

16 A Well, he had indicated to us that Inbursa, who was providing
17 financing for the purchase of the SPCC shares by AMC, was
18 requiring that the Yankee bonds be paid in full.

19 Q And what did you think about that when you heard it?

20 A Well, it -- it was kind of a startling revelation to me
21 because it was the first time I had heard this, and we were
22 being asked to carve out \$100 million of the proceeds of the
23 SPCC sale to pay the Yankee bonds.

24 Q Did you have an opinion as to whether that was the right or
25 wrong thing to do?

1 A Well, I clearly thought it was the wrong thing to do because
2 it would be favoring one creditor over another creditor.

3 Q Well, but, Mr. Frei, didn't you know that those bonds were
4 coming due? Didn't they have to be paid?

5 A Well, there certainly was room to negotiate. And I figured
6 that that was another reason for filing Chapter 11.

7 Q Now, let me show you Plaintiff's Exhibit 197.

8 MR. TERRELL: And Your Honor has seen this before.

9 BY MR. TERRELL:

10 Q These are the January 29th, 2003, restructuring committee
11 meeting minutes.

12 And in particular, sir, I want you to turn to something we
13 highlighted on page 1. And here, referring to Genaro Larrea, it
14 says: "He also advised the committee that it was not a
15 condition to such financing that any portion of the proceeds of
16 the sale of the SPCC shares be used for the payment of the
17 Yankee bonds."

18 Do you recall a discussion by Mr. Genaro Larrea at this
19 January 29 meeting about the Yankee bonds?

20 A Yes. It was kind of a surprising comment because two days
21 before he had indicated that Inbursa was requiring the payment
22 of the Yankee bonds, and now two days later he's saying that
23 that's no longer a requirement by Inbursa.

24 Q What did you think when you heard that?

25 A Well, I thought it was kind of a strange flip flop, and it

1 raised concern in my mind that we needed to do some further
2 analysis with E&Y on the situation.

3 Q All right. I'd like to turn now to page 2 of this same
4 document and in particular to the language that we've blown up.
5 And it says, "The committee unanimously agreed that no payment
6 of the Yankee bonds would be made unless and until the committee
7 has received an approved reasonable projections confirmed as
8 such by EYCF in accordance with its normal testing procedure
9 which demonstrated that the corporation would have sufficient
10 cash resources after payment of the Yankee bonds to continue its
11 operations and satisfy its other payment obligations to
12 similarly situated creditors."

13 Is this a vote that was unanimously taken at this meeting by
14 you, Mr. Patton, and Genaro Larrea?

15 A Yes, it was a unanimous consent.

16 Q Did you feel like you had Mr. Larrea's promise?

17 A Yes.

18 Q All right, sir. Now I would like to ask you to look at
19 Plaintiff's Exhibit 237.

20 MR. TERRELL: 237, I believe Your Honor has seen before.

21 BY MR. TERRELL:

22 Q It is a February 27, 2003 e-mail from Jock Patton to Genaro
23 Larrea with a copy to you and some others. And in particular,
24 I'd like for you to take a moment and look at the language we've
25 highlighted on page 2 of this document.

1 Take a moment and look at it, if you will, Mr. Frei, and
2 read it to yourself.

3 MR. TERRELL: And for the record, I'll just say, it
4 says, "At the time the restructuring committee voted to
5 recommend the final terms of the SPCC stock sale to the full
6 board of ASARCO, including the settlement terms now embodied in
7 the consent degree. Among other things, Al and I relied on the
8 following. A, we were assured that the financing for the sale
9 was available for a prompt closing. B, we were provided with
10 cash flow projections which indicated that the company would be
11 in a position to continue operations if the Yankee bonds were
12 not paid. And C, we were assured that the Yankee bonds would
13 not be paid unless such payment was justified by cash on hand
14 plus cash flow projections, which we specifically approved. All
15 of these items are now in question."

16 Please tell Judge Hanen, Mr. Frei, what you thought about
17 Mr. Patton's e-mail when you received a copy of it.

18 THE WITNESS: Well, I agreed with this e-mail and the
19 fact that it had been a month since we had had a restructuring
20 committee meeting. The one on February 3rd was canceled, and he
21 was just outlining the conditions that we had set on the
22 approval of the SPCC sale, and those had not yet been met.

23 BY MR. TERRELL:

24 Q Now I'd like to turn your attention to Plaintiff's
25 Exhibit 396.

1 MR. TERRELL: Your Honor, I believe, has seen this one
2 before. At least it's been introduced in evidence. It's
3 unanimous consent of the board of directors approving the SPCC
4 transfer dated January 31, 2003.

5 BY MR. TERRELL:

6 Q Now, Mr. Frei, I want to ask you, sir, did there come a time
7 when you signed a page of a unanimous consent that in some way
8 signified some approval of the transfer?

9 A Well, I signed a page on a consent because I was asked to
10 sign that page so that we could position documentation for an
11 eventual close once the conditions that were set for this SPCC
12 transfer was -- were met.

13 Q Did you mean, when you signed this, to signify final and
14 unconditional approval?

15 A Absolutely not. It was just indicated to me that they
16 needed to position the paper work for the eventual completion of
17 the transaction.

18 Q When did you sign this?

19 A I signed that on March 7th of 2003.

20 Q All right. I'd like to flip to the back page, the signature
21 page of this document. I notice that this document is dated
22 January 31, 2003. There are a lot of signatures, one that
23 purports to be yours; one that purports to be Mr. Patton's. On
24 the document you signed, were there any other signatures?

25 A There were no other signatures on that document.

1 Q Was -- did it have any date at all?

2 A Absolutely not.

3 Q Do you know where this document comes from?

4 A I have no idea.

5 Q Now, sir, I'd like to turn your attention to a new exhibit.

6 It's Plaintiff's Exhibit 1370. It's a Monday, March 31, 2003,

7 e-mail from a lawyer at Sidley Austin attaching a consent. And

8 it's in the morning of that day, and it says, "Action in writing

9 by unanimous consent of the board of directors of ASARCO."

10 I'd like to flip to the back page of this. On the back page

11 of this one that was sent on March 31, 2003, by a Sidley lawyer,

12 do you see that there are blank spaces for the directors of

13 ASARCO to sign?

14 A Yes.

15 Q Do you notice that your name and Mr. Patton's name are

16 struck out?

17 A Yes, I do.

18 Q Had you ever seen this document before you came to

19 Brownsville?

20 A No, I hadn't.

21 Q I showed it to you for the first time?

22 A Yes.

23 Q Having looked at it and knowing the events, what does it

24 signify to you?

25 A Well, it signifies to me that they didn't need our approval

1 on this transaction.

2 Q And they didn't think you were going to approve it?

3 A I think that's correct.

4 Q All right, sir. Now I want to show you another document.

5 It's a new one also, Plaintiff's Exhibit 1369. This is another

6 e-mail from the Sidley lawyer later in the day on March 31,

7 2003, again with a consent attached. And I'd like to flip to

8 the signature pages on this document.

9 The first signature page, does it bear the date written in
10 March 27, 2003?

11 A Yes, it does.

12 Q And do you see that it bears some signatures?

13 A Yes.

14 Q Let's flip to the next page. Do you see that this page
15 bears another signature?

16 A Yes, it does.

17 Q And the next page. Two more signatures?

18 A Yes.

19 Q Next page, two more signatures?

20 A Yes.

21 Q Did you see your signature anywhere on this document?

22 A No, I didn't.

23 Q Who are the people -- what was the nature of the directors
24 who signed this consent?

25 A Well, it appears that it was signed on the 27th, the day

1 after our resignation, and it included the ASARCO directors who
2 were affiliated with Grupo.

3 Q All right, sir. I'd like to now show you Plaintiff's
4 Exhibit 255.

5 MR. TERRELL: Your Honor has seen this before.

6 BY MR. TERRELL:

7 Q This is -- appears to be a letter dated March 26, 2003, to
8 the board of directors of ASARCO, attention Douglas McAllister,
9 hand delivered. What is this document?

10 A This is a resignation letter that Jock Patton and I signed
11 on March 26th.

12 Q Now, did Mr. Patton just tell you to sign this and you
13 signed it without reading or understanding it?

14 A No, I didn't. Mr. Patton had drafted the letter and then we
15 sat down and reviewed it. And I don't recall whether we made
16 any changes to it, but it was after a discussion that I signed
17 it.

18 Q And did you send it over to ASARCO?

19 A Yes.

20 Q Now let me show you Plaintiff's Exhibit 266.

21 MR. TERRELL: And this document Your Honor has seen
22 before. I believe you have.

23 BY MR. TERRELL:

24 Q It is an e-mail from Jock Patton to you with a copy to Craig
25 Hansen on March 27, 2003. And I'd like to blow up a part of it.

1 Hard to read. This part says, "There is no justification
2 apparent to us which supports favoritism of the Y bonds over the
3 rights and interests of other claimants and creditors,
4 especially when such favoritism may itself cause the demise of
5 the enterprise. Whether the Y bond payment is a fraud on
6 creditors is a legal matter. The various memos from Squire
7 Sanders cover this point well. However, from our independent
8 business judgment perspective, it totally flunks the most
9 minimal standards of reasonable, possibly ethical conduct,
10 because we cannot discern any legitimate reason for ASARCO to do
11 it. Again, since the rest of the board of ASARCO has presented
12 the SPCC sale and the Y bond payment to us as an inseparable
13 package, it is perfectly appropriate for us to reject the
14 package as a whole by withdrawing our prior approval of the SPCC
15 sale."

16 When you got this e-mail from Mr. Patton, what did you
17 think?

18 A Well, I agreed with the e-mail.

19 Q Did the e-mail correctly or incorrectly express your
20 concerns?

21 A Well, it correctly expressed my concerns, and I responded to
22 Mr. Patton.

23 Q All right. Let's look at that response. Let's look at
24 Plaintiff's Exhibit 265. This appears to be an e-mail from you
25 to Mr. Patton on the same day, a little later. Did you send

1 this to Mr. Patton?

2 A Yes, I did.

3 Q What did you tell Mr. Patton?

4 A "Jock, you articulated the reasons for our resignation
5 perfectly."

6 MR. TERRELL: Your Honor, I pass the witness.

7 MR. WALLACE: Your Honor, we too have a set of exhibits
8 that we believe we'll be using during the presentation of our
9 cross-examination of Mr. Frei, and we've provided counsel, our
10 opposing counsel and the witness with a copy, and we will give
11 counsel in the jury box a set as well.

12 May I proceed, Your Honor?

13 THE COURT: You may.

14 CROSS-EXAMINATION

15 BY MR. WALLACE:

16 Q Good afternoon, Mr. Frei. How are you?

17 A I'm fine, sir.

18 Q I'll introduce myself to you since we haven't met. I'm
19 Casey Wallace, and I'm one of the lawyers that represents
20 Americas Mining Corporation.

21 A Nice to meet you, Casey.

22 Q I'd like to talk to you for a little bit about your
23 activities and what you were doing during the time you served on
24 the ASARCO board, and also cover some of the points that
25 Mr. Terrell discussed with you in your direct examination.

1 But let's get some history here first. It's my
2 understanding that when you served on the ASARCO board, you were
3 also acting as the chief financial officer and the chief
4 operating officer for Autom Church Supply Company during the
5 entire time of your service on the board of directors of ASARCO;
6 is that correct?

7 A That's correct.

8 Q You had a dual role at Autom Church, correct?

9 A Yes.

10 Q It kept you very busy?

11 A Reasonably busy. Autom was not a large company.

12 Q Well, every day when you woke up to go to work, you went to
13 work at Autom Church Supply, that was your plan, not to ASARCO,
14 correct?

15 A That's correct.

16 Q And while you were on the board of directors at ASARCO, you
17 also served on the board of directors of Swift Transportation,
18 correct?

19 A That's correct.

20 Q And Swift Transportation was or is the largest
21 transportation company in America, right?

22 A That's correct.

23 Q Now, while you served on the board of directors of Swift
24 Transportation, you had a board mate, if you will. His name was
25 Jock Patton, correct?

1 A That's correct.

2 Q And while you and Mr. Patton served on that board, you
3 received services from Mr. Craig Hansen at Squire Sanders,
4 didn't you?

5 A Could I correct my previous answer?

6 Q Well --

7 A The reason I said that's correct is Mr. Patton did serve on
8 the Swift Transportation board, but not at the time that we
9 served on the ASARCO board. He came on the board later.

10 Q Fair enough. Fair enough. But you served on the board of
11 ASARCO together?

12 A Yes.

13 Q And you served on the board of Swift Transportation
14 together, correct?

15 A That's correct.

16 Q And it was Mr. Craig Hansen at Squire Sanders who gave
17 services to you while you were on the board of Swift
18 Transportation, correct?

19 A I don't recall Craig Hansen. His company might have.

20 Q Squire Sanders certainly did, right?

21 A Yes.

22 Q All right. And when you served on the board at America
23 West, again you received its advice and services from Squire
24 Sanders, right?

25 A To some degree, yes, we did.

1 Q And interestingly enough, Mr. Jock Patton served on that
2 board as your board mate, if you will, right?

3 A That's correct.

4 Q And it was Mr. Patton who was contacted by Mr. Sanders --
5 excuse me -- by Mr. Hansen at Squire Sanders to serve on the
6 board of ASARCO, right?

7 A That's correct.

8 Q And Mr. Patton called you and said come on, join me on the
9 board over at ASARCO, right?

10 A That's correct.

11 Q And the service on the -- service on these boards of
12 directors, it's kind of a club in a way, isn't it?

13 A Well, I don't know if I'd call it a club, but they certainly
14 cross paths on some of these companies.

15 Q Sure. It's not any kind of coincidence that Squire Sanders
16 gets you and Mr. Patton to serve on boards together, is it?

17 A Well, Squire Sanders, the only board that Squire Sanders got
18 me on is the ASARCO board. The America West board came as a
19 result of me leaving Continental Airlines and coming to work in
20 Phoenix to help start America West.

21 Q Well, nevertheless, when serving on these distressed
22 companies, and the court's heard from Mr. Hansen and they've
23 heard from Mr. Patton and the court is now hearing from you,
24 it's not hearing three different voices. It's hearing the same
25 song but a third verse now with your testimony; is that correct?

1. A Well, I guess you could say that.

2 Q Fair enough. And you and Mr. Patton, you're paid rather
3 well for service on these boards, regardless of the quality or
4 quantity of your work. And I'm not questioning either the
5 quality or quantity of your work, but you're paid rather well no
6 matter what you do, correct?

7 A It depends on which board you're talking about.

8 Q Well, you have been paid for your performance on the boards
9 which I've mentioned, correct?

10 A I got partial payment for the ASARCO board.

11 Q Fair enough. But you got paid for serving on the Swift
12 Transportation board?

13 A Yes.

14 Q You got paid for your American West work, right?

15 A No, I did not because I was an employee of America West.

16 Q Okay. But your employment consumed your work that you
17 performed on the board, right?

18 A Well, that's correct.

19 THE COURT: What did you get paid for serving on the
20 ASARCO board?

21 THE WITNESS: I don't recall, but I recall that we got
22 paid -- it was less than \$10,000 a month, and we got paid three
23 months, I believe, out of the six months that we served.

24 THE COURT: Okay.

25 Go ahead, counsel.

1 MR. WALLACE: Thank you, Your Honor.

2 BY MR. WALLACE:

3 Q Mr. Frei, it's true, is it not, that when you went to work
4 on the ASARCO board, you never truly intended to dedicate much
5 time in your service to ASARCO while serving on the
6 restructuring committee?

7 A I don't think that's a true statement. I didn't have a lot
8 of nighttime work with the Autom Church Supply board, so I was
9 willing to serve as much as required. In fact, I had discussed
10 the question of joining the ASARCO board with the owner of Autom
11 Church Supply, and he gave me full approval to take what time
12 was necessary.

13 Q Well, it's very interesting, because when Mr. Patton asked
14 you to join the ASARCO board, your first inquiry was, well, how
15 much time will it take. Do you recall that?

16 A That could well be.

17 Q Do you recall testifying that you went and then talked to
18 the -- your boss at Autom Church Supply, and your response to
19 his questions was, I don't think it will take that many hours?

20 A My response may have been that it didn't take many hours
21 during the day. It didn't have anything to do with how many
22 hours in the evening.

23 Q Is that what you testified in your previous testimony, sir?

24 A I don't recall that.

25 Q Did you conduct any independent due diligence, either prior

1 to or while on the board of ASARCO?

2 A No, I didn't.

3 Q Who did you rely upon to conduct that due diligence?

4 A I relied on Ernst & Young and Squire Sanders primarily as
5 providing the professional input to our meetings.

6 Q Actually, you relied upon Jock Patton, didn't you?

7 A I certainly relied on Jock Patton to an extent because I
8 relied on him when I was at America West when he was general
9 counsel for America West, so I knew his expertise.

10 Q Well, now, there's been representations made to this court
11 that there were certain things that you did not know while
12 serving on the board of ASARCO and certain documents you did not
13 receive. And I want to talk to you a little bit about that.

14 But first I want to talk to you and confirm a few things.
15 I'd ask that DX 1, Defendant's Exhibit No. 1 be put up on the
16 screen.

17 Now, Mr. Frei, you're familiar with that consent decree
18 entered into by ASARCO with the United States of America?

19 A Yes.

20 Q All right. And that was entered into while you were serving
21 on the board of directors of ASARCO, was it not?

22 A That's correct.

23 Q Okay. This was a significant and important document. Do
24 you agree with me?

25 A Yes.

1 Q But you never took the time to read that document, to review
2 that document or know its terms, did you?

3 A I had an overview of the terms that were in that document.

4 Q Pardon me?

5 A I had an overview of the terms that were in that document.

6 Q You had no review or an overview?

7 A An overview.

8 Q An overview. Who gave you that overview?

9 A Well, I read part of it, and I heard some of it from Squire
10 Sanders, I believe.

11 MR. WALLACE: Will you bring up Defendant's Exhibit 488,
12 please? And bring up the next page.

13 BY MR. WALLACE:

14 Q Sir, are you familiar with that document?

15 A I have trouble reading it.

16 Q It's the unanimous -- I'll represent to you that it's the
17 unanimous consent of the board of directors of ASARCO,
18 Incorporated.

19 A Yes.

20 Q All right. And that's a document you testified in your
21 direct examination a little earlier, correct?

22 A That's correct.

23 Q Now, that's a significant document, right?

24 A That's correct.

25 Q That's an important document, correct?

1 A Yes, I'd say it's an important document.

2 Q It's probably one of the centerpieces of this entire
3 litigation; would you agree with me?

4 A Well, it probably was at some point in time. But at the
5 time I was involved in it, it was not a centerpiece.

6 Q Well, it was a -- certainly an important document to be
7 executed by a member of the board of directors of ASARCO, right?

8 A Yes.

9 Q Okay. But you never one time read that document before you
10 signed it, did you?

11 A I did not see that document when I signed it. I saw a
12 signature page.

13 Q Did you ask Mr. Larrea's secretary, the woman who you met at
14 the offices of ASARCO when you went in to sign that document,
15 hey, wait, time out. I want to read what I'm signing?

16 A I was told by Mr. Patton, who had talked to Dave McAllister
17 upon the request of Genaro Larrea, that we sign this document to
18 position it for the eventual closing of that transaction. I
19 signed it on March 7th because that was the time when, after
20 talking to Mr. Patton, he was convinced that Mr. McAllister had
21 indicated we were just positioning the document so the eventual
22 closing of the transaction could take place once all the
23 conditions were met. And the document I signed was a one-page
24 signature page with my name on it only.

25 MR. WALLACE: Your Honor, I'll have to object to the

1 nonresponsiveness of the answer to my question.

2 THE COURT: Sustained.

3 BY MR. WALLACE:

4 Q Mr. Frei, when you went in and met with the secretary of
5 Mr. Larrea at the offices of ASARCO before you signed the action
6 in writing by unanimous consent of the board of directors of
7 ASARCO, Incorporated, did you say, hey, time out. I want to
8 read the document that I'm about to sign before you put your
9 signature on the paper?

10 A No, I did not.

11 Q Were you exercising your fiduciary duties to ASARCO at the
12 time in which you executed that document?

13 A I believe I was.

14 Q Even though you didn't read it and you didn't even know what
15 the terms of that document were, correct?

16 A That was not the basis on which I was signing it.

17 Q All right. So you didn't read -- you didn't read, review
18 and understand the terms of the consent decree, correct?

19 A It was a conditional approval that was given, and I did not
20 see the document. I signed the signature page.

21 Q Let's go back to the consent decree entered into between the
22 United States of America, ASARCO Inc. and an Article III judge.
23 You never read, reviewed, understood, or analyzed that document,
24 did you?

25 A I read enough of that document to know that there was a

1 requirement by the DOJ that ASARCO be a viable company for more
2 than 12 months upon the completion of the SPCC transfer.

3 Q Turns out that happened to come true, didn't it?

4 A I can't answer that because I was gone on March 26th.

5 Q Okay. Do you know when the consent decree was signed?

6 A Well, I saw a couple of different signature pages, so I
7 don't know exactly.

8 Q Okay. Let's go back to Defendant's Exhibit one, please.
9 And if we could go to Bates page AMC0010762.

10 MR. WALLACE: Will you blow up the signature and the
11 date line, please?

12 BY MR. WALLACE:

13 Q Can you see, Mr. Frei, that that was executed by the
14 Honorable Robert Broomfield, Judge of the United States District
15 Court for the District of Arizona on February 2nd, 2003?

16 A Yes.

17 Q And it -- in it you understand there was a promise or an
18 agreement by ASARCO made to the United States of America that
19 they'd stay in business for 12 months?

20 A That's correct.

21 Q And do you understand that it wasn't until 2005 that ASARCO
22 filed bankruptcy?

23 A That's what I was told.

24 Q They lived up to their promise, didn't they?

25 A Depends on what you'd consider stay in business.

1 Q They didn't file bankruptcy, and they certainly didn't shut
2 their doors, did they?

3 A Well, I can't speak to how they operated, but it's my
4 understanding from what I've heard that they weren't very
5 viable.

6 Q Did they shut their doors?

7 A Well, you know, Terri Schiavo lived for three years on life
8 support, so . . .

9 Q Mr. Frei, I don't know if you're having a hard time
10 understanding my questions. I'm simply asking, to your
11 knowledge, did ASARCO shut its doors?

12 A Not to my knowledge.

13 Q Did they go out of business?

14 A Not to my knowledge.

15 Q Within the 12 months from February 2nd, 2003, when that was
16 approved by Judge Broomfield, did they quit mining?

17 A I can't speak to that because I don't know.

18 Q You don't know?

19 A Well, I don't know what they mined. I mean, they may not
20 have mined any copper, but they could have been in business.

21 Q Okay. Other than knowing that they had a promise to stay in
22 business for 12 months, which according to your testimony they
23 lived up to, do you know any other terms and conditions of the
24 consent decree dated February 2nd, 2003?

25 A Well, there was a condition in that consent decree that --

1 that allowed AMC to loan money to ASARCO if they wanted to pay
2 the Yankee bonds, as I recall.

3 Q How much money?

4 A I believe it was \$50 million.

5 Q What other terms do you know about?

6 A I don't recall any of the other specifics other than some of
7 the settlements.

8 Q Because you never really did -- you personally didn't review
9 and analyze it, right?

10 A That's correct.

11 Q You relied on others, correct?

12 A That's correct.

13 Q And you had to rely on others, did you not?

14 A Well, I had experts that were working with them, and I did
15 rely on them, yes.

16 Q And we've acknowledged you never read the unanimous consent,
17 right?

18 A That's correct.

19 Q Now, let's go back to the representations made by this court
20 that you didn't receive certain documents and you didn't
21 review -- that you didn't receive certain documents and you
22 didn't receive certain information.

23 There's been a representation to the court that you weren't
24 provided certain Houlihan letters. You know who Houlihan is?

25 A I recently heard of the Houlihan letters.

1 Q You didn't know who Houlihan was before that?

2 A Well, I knew Houlihan Lokey was an investment banking firm.

3 Q Well, if you would have received Houlihan letters, frankly,
4 you wouldn't have read them. You would have relied on someone
5 else to read them, correct?

6 A Well, if we had of received them -- depends on what they
7 would have said.

8 Q Kind of depends on what the unanimous consent would have
9 said is whether you ever would have read it, right?

10 A Well --

11 MR. TERRELL: Excuse me, Your Honor. It's
12 argumentative.

13 THE COURT: Sustained.

14 BY MR. WALLACE:

15 Q Well, frankly, you don't know what Houlihan was doing or
16 wasn't doing, right?

17 A Well, it's my understanding that they were -- preceded Ernst
18 & Young as far as the financial analyst that was providing
19 information to ASARCO.

20 Q And you were relying on Ernst & Young; you weren't relying
21 on Houlihan Lokey, were you?

22 A I didn't know they existed at the time I was on the board.

23 THE COURT: Let me ask you something about your last
24 answer. Did you not know they existed, or you didn't know that
25 they had any connection with ASARCO?

1 THE WITNESS: Excuse me, Your Honor. I didn't know they
2 had any connection with ASARCO. I knew they existed, yes.

3 BY MR. WALLACE:

4 Q Do you know why, sir -- I'm switching gears a little bit.
5 Do you know why ASARCO filed bankruptcy in 2005?

6 A No, I don't.

7 Q You have no idea whether the bankruptcy is related to the
8 SPCC share transfer, do you?

9 A Would you repeat that question?

10 Q You have no idea whether the bankruptcy is related in any
11 way to the SPCC share transfer, do you?

12 A I don't have proof of that, no.

13 Q And you have no idea whether the bankruptcy is related to
14 the payment of the Yankee bonds, do you?

15 A Well, I can only conclude that if you pay \$100 million out
16 of your proceeds from this sale of the SPCC shares, that it may
17 have some effect on it.

18 Q That's a guess on your part, right, because you didn't keep
19 up with what was going on at ASARCO financially from 2003 to
20 2005, did you?

21 A That's correct.

22 Q All right. Was the real cause of the bankruptcy of ASARCO
23 in 2005 caused by the labor strike, sir?

24 A I do not know that.

25 Q All right. Was the real cause of the bankruptcy related to

1 the November 11th, 2004, advice given by Baker Botts encouraging
2 ASARCO into this bankruptcy for reasons totally unrelated to the
3 SPCC share transfer or the payment of the Yankee bonds?

4 A I don't know that.

5 Q All right. Well, in fact, let's look at Defendant's Exhibit
6 555, please. And let's turn to Bates label page AMC0275926.

7 And I've got there on the screen for you a conclusion. And I
8 would like you to read that conclusion out loud, sir.

9 A "It is in the best interest of all the constituents that
10 ASARCO be returned to financial viability, the asbestos and
11 environmental litigations achieve global resolution, the New
12 York litigation is resolved and the other ASARCO-related
13 lawsuits and claims against the ASARCO shareholder and ultimate
14 owners are finally and forever terminated. All this can only be
15 achieved in an ASARCO Chapter 11 case. The capital markets,
16 bankers, vendors and other parties no longer view bankruptcy as
17 a stigma, but rather as a restructuring tool that is designed
18 for companies like ASARCO. An ASARCO Chapter 11 would be viewed
19 by many in the business community as ASARCO at long last
20 pursuing the responsible and business-appropriate course of
21 action given the situation in which it finds itself. This
22 strategy is thus one which is designed to diminish the acrimony
23 and frustration among ASARCO's various constituents and which
24 has the greatest likelihood of salvaging the reputation and good
25 will in the financial community for ASARCO's management and

1 ownership."

2 Q Thank you, Mr. Frei. Now, let's go back to the first page
3 of that document. And, again, it's Defendant's Exhibit 555.

4 MR. WALLACE: Can we blow up the memorandum, the date,
5 the to and from, please, including the header?

6 BY MR. WALLACE:

7 Q Okay. You understand that that's a memorandum created by
8 Baker Botts?

9 A That's what it says.

10 Q All right. From a man named Jack Kinzie to
11 Daniel Tellechea?

12 A That's what it says.

13 MR. WALLACE: Oh, Kinzie?

14 BY MR. WALLACE:

15 Q Pardon me, Kinzie. Okay. Now, let's go back to that other
16 page. The page AMC0275926. Sir, can you point in there in the
17 conclusions as to why ASARCO should file bankruptcy? Can you
18 point the court to any discussion about the bankruptcy being due
19 to the SPCC loan transaction?

20 A Well, what I could point to is it sounds like they arrived
21 at the conclusion that I thought of earlier.

22 Q Okay. But that's not my question, sir. My question is:
23 Can you point into that conclusion that Baker Botts is telling
24 ASARCO you ought to file bankruptcy that it says because it's --
25 because of the SPCC loan transaction?

1 A No, it doesn't say that in there.

2 Q All right. Does -- do the letters or the words SPCC or
3 Southern Peru Copper appear anywhere in that conclusion?

4 A Not in that conclusion, no.

5 Q Okay. Or in the recommendations that are found in that
6 conclusion, given by Baker Botts to ASARCO, as to why they ought
7 to file bankruptcy?

8 A I can't see that in that recommendation, but --

9 Q Is there any mention of the bankruptcy being pursued because
10 the Yankee bonds were paid?

11 A No mention of that.

12 Q Okay. And there's absolutely no reference or any mention
13 that the transfer of the SPCC shares had anything to do with the
14 fraudulent conveyance in that conclusion, is there?

15 A Not in that conclusion.

16 Q And that was the conclusion reached by Baker Botts
17 transmitted to ASARCO in 2004, correct?

18 A That's what the date said, yes.

19 Q Well, let's talk about the payment of the Yankee bonds.

20 According to your testimony earlier today, on January 27th,
21 2003, in a restructuring committee, Genaro Larrea told you that
22 the Inbursa loan transaction's terms and conditions required
23 that the Yankee bonds be paid, correct?

24 A That's correct.

25 Q All right. And that's confirmed in the minutes, isn't it?

1 A It's confirmed in the minutes that the Yankee bonds had to
2 be paid.

3 Q That the terms and conditions of the Inbursa loan required
4 that the loan -- that the Yankee bonds be paid?

5 A I believe in the minutes it said that there was \$50 million
6 of cash from the proceeds of the SPCC sale, and \$48 million of
7 the proceeds from the monetization of insurance policies would
8 be used to pay the Yankee bonds.

9 Q Okay. Let's go to Defendant's Exhibit 695 at
10 page JPA000217. Those are the minutes of the January 27, 2003,
11 meeting, correct?

12 A That's what it says, yes.

13 Q Now, if we could go to the next page -- excuse me, page that
14 ends 3764, it would be the third page of the January 27th, 2003,
15 minutes. Well, let's skip ahead, because I've lost my place on
16 this particular minutes.

17 But in January -- you were told in that meeting by
18 Mr. Larrea Inbursa was requiring, for their loan to go through,
19 for the bonds to be paid, correct?

20 A That's correct.

21 Q All right. Now, let's go to the -- let's go to PX 695, and
22 it's JPA000221.

23 MR. WALLACE: All right. And if you can blow that top
24 portion up, please?

25 BY MR. WALLACE:

1 Q These are the minutes from the January 29th, 2003 minutes,
2 correct?

3 A That's correct.

4 Q Now, if -- I'd like you to look at the second full
5 paragraph, please, in the last sentence of the second full
6 paragraph. It says, Mr. -- "He," I believe he's talking about
7 Mr. Larrea, "also advised the committee that it was not a
8 condition to such financing that any portion of the proceeds of
9 the sale of the SPCC shares be used for the payment of the
10 Yankee bonds." Did I read that correctly?

11 A That's correct.

12 Q All right. Now, he told you it was a condition of the loan
13 two days earlier, right?

14 A That's correct.

15 Q He comes back to a restructuring committee meeting, and he
16 says, "I was wrong. It's not a condition of the loan," right?

17 A That's what it says here, yes.

18 Q Now, the minutes don't reflect that he said: We're not
19 going to pay them. He just simply said it's not a part of --
20 not a requirement of the terms and conditions of the loan,
21 right?

22 Read the sentence very carefully if you need to.

23 A That's what the sentence says, yes.

24 Q And that's exactly what was transpiring in these two
25 meetings. It was simply a difference between what he thought

1 the terms and conditions were on one day, and after reviewing
2 the terms and conditions, confirmed that, indeed, it wasn't a
3 term of the loan that the Yankee bonds be paid, right?

4 A But he also had unanimous consent that we wouldn't pay the
5 Yankee bonds, if you turn to page 2 of that same January 29th
6 minutes.

7 Q But, Mr. Frei, I'm not talking about that paragraph, and I'm
8 not talking about that discussion or the unanimous consent -- or
9 the unanimous decision that was made. I'm asking you about the
10 context of these conversations, the difference between
11 January 7th -- 27th and January 29th.

12 Now, correct me if I'm wrong. On January 27, 2003, Genaro
13 Larrea told the committee -- the restructuring committee that
14 the terms and conditions of the loan, the Inbursa loan, required
15 the payment of the Yankee bonds, correct?

16 A That's correct.

17 Q And two days later, he came back, pursuant to the second
18 full paragraph, the last sentence in that paragraph of the
19 January 29th, 2003 amendments -- excuse me, minutes, that the
20 terms and conditions of the financing did not require the
21 payment of the Yankee bonds?

22 A That's correct.

23 Q The only difference between what he told you on
24 January 27th and January 29th was about the terms and conditions
25 of the loan, right?

1 A Well, yes. And then we --

2 Q Well, wait.

3 THE COURT: Let him finish.

4 THE WITNESS: Yes. And then we all agreed that we would
5 not pay the Yankee bonds.

6 BY MR. WALLACE:

7 Q Okay. But the only difference between the two -- the
8 contextual difference between the two discussions about whether
9 the Yankee bonds would be paid or not paid is what the terms and
10 conditions of the loan required, correct?

11 A That's what the document says. But in the context of the
12 meeting, there was a clear understanding that he was now saying
13 they were not required to be paid and that there was an
14 agreement that there would be no payment of the Yankee bonds.

15 Q Other than these minutes, do you have any document that
16 memorializes that?

17 A Well, I have what these minutes say, and I believe that
18 there was a press release the following day that said they were
19 going to pay them.

20 Q And we'll get to that press release.

21 A Okay.

22 Q But other than Mr. Larrea's statement as memorialized in
23 writing in the minutes from January 29th, 2003, that the terms
24 and conditions of the loan didn't require the Yankee bonds to be
25 paid, there's no written documentation from Mr. Larrea or from

1 you or from anybody else you know that says Mr. Larrea
2 represented now that the Yankee bonds wouldn't be paid, period.

3 A Are you asking me if there's no documentation that said
4 Mr. Larrea said they wouldn't be paid? Is that what your
5 question was?

6 Q I'm sure I'm asking a very sloppy question, Mr. Frei. And I
7 apologize.

8 A I'm sorry. I just --

9 Q I'm sure I'm asking a very poor question.

10 The contextual difference between the 27th and the 29th was
11 just Mr. Larrea saying the terms and conditions of the loan, on
12 one hand, did provide that the Yankee bonds be paid; and on the
13 other hand, two days later, he said, well, the terms and
14 conditions don't require it, correct?

15 A That's correct.

16 Q Now, other than the committee saying, let's not pay them
17 right now, which -- the paragraph that you follow-up on the next
18 page, Mr. Larrea did not make a representation to you that the
19 bonds simply wouldn't be paid, did he?

20 A Well, this, to my recollection, is the last communication I
21 had with Mr. Larrea.

22 Q But he did not make the representation as a flat statement:
23 We're not paying those bonds?

24 A I can't -- can't comment on that. I don't know that.

25 Q You don't recall him making a statement like that?

1 A I don't.

2 Q Fair enough. Fair enough. I think I got where I needed to
3 go.

4 Now, one day later on January 20th -- January 30th, 2003,
5 ASARCO issued the press release that you mentioned a moment ago,
6 correct?

7 A Yes.

8 Q All right.

9 MR. WALLACE: And if we could see PX 200. And -- at
10 Bates Label 8838. And can you blow that up a little bit so
11 Mr. Frei can see it?

12 BY MR. WALLACE:

13 Q That's the press release to which you make reference?

14 A Yes.

15 Q And it shows that the Yankee bonds are going to be paid?

16 A I'm looking for the \$550 million --

17 MR. WALLACE: Take it down a little bit.

18 THE COURT: I think it's in a subsequent paragraph.

19 BY MR. WALLACE:

20 Q Well, it says, "Southern Peru" -- yeah, there we go.

21 A Yeah, there it is.

22 Q And where it says, "Through this transaction, ASARCO
23 received the funds necessary to pay \$550 million in debt due the
24 next week," that's where you pick up they're going to pay the
25 Yankee bonds, right?

1 A That's correct.

2 Q Now, there's no inconsistency between this and what the
3 minutes reflect with respect to what Mr. Larrea said. Not to
4 what the committee agreed to, but with what Mr. Larrea said
5 about the terms and conditions of the Inbursa loan, is there?

6 A Well, there's -- there's a conflict in my mind that the
7 press release says we're going to pay the Yankee bonds, and he
8 said we were not.

9 Q Okay. Good. Good. The press -- the minutes from the
10 committee meeting said they weren't going to pay the bonds --
11 that you were going to wait for the committee to approve payment
12 of the bonds, right?

13 A Well, yes. We were waiting for a number of things,
14 including --

15 Q Fair enough. The committee can't approve payment of the
16 bonds, can they?

17 A Well, the committee certainly had set down requirements
18 before we would approve the SPCC sale and the payment of any
19 Yankee bonds.

20 Q But the committee can't approve the payment of the bonds,
21 can they?

22 A I think the committee certainly can approve or disapprove
23 the payment of the Yankee bonds.

24 Q Is it your testimony to Judge Hanen sitting here today that
25 the committee, acting alone, can approve or disapprove the

1 payment of the Yankee bonds, sir?

2 A The committee can recommend the payment or recommend not to
3 pay them.

4 Q That's correct. All they have is a recommendation power,
5 right?

6 A That's correct.

7 Q It's up to the board of directors of ASARCO, Inc. to make
8 the approval of the payment of the Yankee bonds; yes or no?

9 A That's correct.

10 Q All right. And it appears that ASARCO, Inc., the board of
11 directors made a decision to pay the Yankee bonds, didn't they?

12 A It appears that way.

13 Q Okay. Regardless of whether you wanted them paid or not?

14 A That's what it appears.

15 Q Okay. Let's -- let's talk about viable going concerns.

16 Do you agree that a viable going concern can pay -- has the
17 right to prefer one creditor over another?

18 A I think a viable going concern has a right, if you're a
19 viable going concern.

20 Q Prefer any creditor they want to, right?

21 A Well, I guess that's correct, if -- if they don't have an
22 obligation to make the payment.

23 Q You can certainly pay your light bill before you pay your
24 phone bill, right?

25 A That's correct.

1 Q And when the Yankee bonds were paid, ASARCO was not in
2 bankruptcy, were they?

3 A In my opinion, they were insolvent.

4 Q That's not my question, sir.

5 When the Yankee bonds were paid, ASARCO was not in
6 bankruptcy, were they?

7 A They had not filed Chapter 11.

8 Q In fact, it wasn't until two-and-a-half full years later
9 that ASARCO, on the advice of Baker Botts on conditions
10 unrelated to the payment of the Yankee bonds as confirmed in
11 Exhibit -- Defendant's Exhibit 555, did they ever file
12 bankruptcy. Isn't that correct?

13 A That's correct.

14 Q So if they're not in bankruptcy and they're a going concern,
15 they can prefer -- make a preference on who they're going to pay
16 as far as creditors, correct?

17 A Well, I think if you're insolvent, and you have -- as a
18 board member anyway, have a fiduciary responsibility to the
19 creditors. And we were exercising that fiduciary responsibility
20 by ensuring a number of things, one of which that ASARCO was a
21 viable going concern, and that the Yankee bonds were not going
22 to be paid.

23 Q Okay. Sir, you never -- you never did any independent due
24 diligence, correct? We've been over that.

25 A Yes.

1 Q And you never made any independent educated due diligence
2 type investigation into the solvency of ASARCO, Inc., did you,
3 personally?

4 A I personally listened to Ernst & Young on numerous occasions
5 announce that there was gaping holes in the cash flow of ASARCO.
6 On February 3rd, I believe they put out a memo that indicated
7 there was an additional \$75 million worth of loophole -- of
8 liabilities that came up -- they came upon on February 3rd, over
9 and above the 50 million plus.

10 So there was 125 or \$150 million, excluding the Yankee
11 bonds, that were outlined by Ernst & Young on February 3rd.

12 Q Okay. And we'll get to that shortly.

13 A Okay.

14 Q But you never personally did an independent investigation
15 and personally came to the conclusion, based on your experience,
16 your knowledge, and your education, that they -- that ASARCO was
17 actually insolvent, did you?

18 A I personally came to the conclusion from the presentation on
19 February -- October 14th, or thereabouts, when Ernst & Young
20 gave a presentation on the inability to meet the senior debt and
21 the mounting other debts as well as the holes in their cash
22 flows, that they were insolvent at that time. We tried to give
23 management all the time possible to present us with information
24 that would allow them to work their way out of it.

25 Q And a month later, in November of that very same year, you

1 thought about getting off the board with Mr. Patton, because all
2 their problems had been solved, hadn't they?

3 A I wouldn't say their problems were solved. In fact, two
4 days later or a few days later, we were talking about filing
5 bankruptcy.

6 Q Have you ever seen a solvency opinion as it relates to
7 ASARCO?

8 A I have not seen a solvency opinion, but Ernst & Young came
9 pretty close to that with their indications.

10 Q Pretty close and being insolvent are two different things,
11 aren't they, sir?

12 A I'm sorry?

13 Q Pretty close and having an insolvency -- excuse me -- a
14 solvency opinion are two different things, aren't they?

15 A Well, a solvency opinion is different than showing a letter
16 that shows you have insurmountable debt, yes. You could say
17 that.

18 Q Well, they lived through 2003, didn't they?

19 A I can't disagree with that. I wasn't there.

20 Q And they lived through 2004, didn't they?

21 A As far as I know, they didn't do any mining. They just
22 operated, existed.

23 Q But you don't have any knowledge whether that's true or not,
24 do you?

25 A I don't.

1 Q Okay. So without speculating on anything, you know that
2 they didn't file bankruptcy until sometime in 2005,
3 two-and-a-half years later after the Yankee bonds were paid,
4 right?

5 A That's correct.

6 Q And the holes you were talking about a minute ago, those
7 were holes you were looking at for the time period of 2003 and
8 2004, right?

9 A Well, I wasn't looking at the holes in 2004 because I
10 resigned before that, but I think there were holes.

11 Q Fair enough. But the holes that were identified that you've
12 testified about were holes that would be in existence in 2003,
13 right?

14 A That's correct.

15 Q But it wasn't until 2005, two-and-a-half years later, they
16 filed bankruptcy, right?

17 A Well, that's correct, when they filed bankruptcy.

18 Q So different holes caused by things like strikes, labor
19 strikes --

20 A Well --

21 Q -- are what causes bankruptcy, right?

22 A -- I haven't seen financials, so I can't tell you whether
23 they paid any of their bills in those two years and whether the
24 creditors just kept mounting up. I just don't know.

25 Q Let's ask about -- let's talk about the Yankee bond payment

1 for a minute.

2 When the payment was made, did you know that the Yankee
3 bonds were in default?

4 A I don't -- I don't know at the time they were made, because
5 I resigned on the 26th of March.

6 Q On March 1, 2003, sir, the Yankee bonds came due and owing.
7 Did you not know that?

8 A I knew that, but they had a lot of other debt that was due
9 too.

10 Q Fair enough. But if they didn't pay the Yankee bonds, what
11 were the bondholders going to do?

12 A I have no idea. That's one of the reasons I thought they
13 should file Chapter 11.

14 Q Did you ever hear of Iridium?

15 A Who?

16 Q Iridium Corporation.

17 A As in satellites?

18 Q Yes, sir.

19 A I've heard of them, yes.

20 Q The bondholders took them into involuntary bankruptcy,
21 didn't they?

22 A I don't -- I didn't -- I don't recall that, but --

23 Q Have you ever heard of Zale Corporation?

24 A I've heard of the Zale Corporation.

25 Q Bondholders took them into involuntary bankruptcy, too,

1 because they didn't pay them off, didn't they?

2 A Well, that's one of the reasons why November 19th we were
3 filing bankruptcy in a subsidiary, to protect against an
4 involuntary bankruptcy.

5 Q Oh, any of these bondholders could have thrown them into
6 involuntary if they hadn't been paid, right? You were just
7 trying to set venue, correct?

8 A We were trying to set venue in figuring that involuntary
9 bankruptcy was a likelihood, yes.

10 Q Flagstar Corporation, you've heard of them?

11 A I've heard of them.

12 Q Their bondholders, because they weren't paid, when their
13 bonds became due and owing, threw that corporation into
14 involuntary bankruptcy, didn't they?

15 A Well, I heard of America West bondholders who, when we went
16 into bankruptcy, ended up getting 100 cents on the dollar
17 because of our restructuring capabilities.

18 Q Well, that's not answering my question, sir.

19 A Well, I thought you were just listing a series of companies
20 that had bonds out there that were taken into involuntary
21 bankruptcy or bankruptcy.

22 Q When payment of those Yankee bonds were made, they were in
23 default, correct?

24 A I believe they were.

25 Q They were due and owing, correct?

1 A They were due and owing along with other debts, yes.

2 Q Anybody that owned a single bond and had \$200 cash in his
3 pocket could have filed an involuntary bankruptcy and threw
4 ASARCO right into bankruptcy, which they were trying to avoid,
5 correct?

6 A Well, I guess that's a legal opinion, and I'm not a lawyer,
7 so --

8 Q Is there anything you disagree with my statement?

9 A I don't disagree with that.

10 THE COURT: \$200 sounds cheap. I thought we had raised
11 our fees.

12 MR. WALLACE: I think you should, Your Honor.

13 BY MR. WALLACE:

14 Q American Pad & Paper Company, you've heard of them?

15 A I can't disagree that I've heard of them. I don't know
16 that.

17 Q How about -- and I'll pronounce the name wrong -- Satelites
18 Mexicanos, have you heard of them?

19 A No.

20 Q Mexican satellite company?

21 A No.

22 Q They had bonds kind of like ASARCO. Do you know what
23 happened to their bonds?

24 A No.

25 Q If I made a representation that the company didn't pay its

1 bondholders when they were due and owing and they were thrown
2 into involuntary bankruptcy, would that surprise you?

3 A It wouldn't surprise me, no.

4 Q It happens quite often, doesn't it?

5 A Well, it's true. It may have been the best thing that would
6 have happened to ASARCO.

7 Q Is to be thrown into an involuntary bankruptcy, is that your
8 testimony, sir?

9 A Well, we were prepared, if that happened, to handle that.

10 Q Well, you didn't have to handle that because the Yankee
11 bonds got paid, didn't they?

12 A Against my opinion.

13 Q Against your opinion, but not against the opinion of others
14 in the company, right?

15 A Not against the opinion of the ASARCO Grupo board members.

16 Q Okay. Can you tell me, sir, what would have happened to the
17 creditworthiness of ASARCO if they hadn't paid the bonds?

18 A No, I can't.

19 Q Can you tell -- can you tell the court what would have
20 happened to the creditworthiness of AMC had its subsidiary,
21 ASARCO, not paid the bonds and been in continual default?

22 A I have no opinion on that.

23 Q What about the creditworthiness of Grupo Mexico, if one of
24 its subsidiaries, ASARCO, hadn't paid its bonds and just let
25 them go?

1 A Well, as a board member of ASARCO, my concern and fiduciary
2 responsibility at the time was to the creditors, not to Grupo or
3 anyone else, so I didn't -- I don't know what would have
4 happened.

5 Q So was the only duty you were acting was to the duty of
6 creditors, as apart to the duty of ASARCO, sir?

7 A No, when -- my duty was to ASARCO and to the creditors, and
8 at the time that I was working on the board, because of the --
9 my opinion of their insolvency, that highlighted the duty
10 towards the creditors. It didn't have anything to do with
11 Grupo's creditworthiness or AMC's creditworthiness.

12 Q Going back to the payments of preference that are allowed
13 for companies to -- to do, to prefer one creditor over another,
14 ASARCO preferred, hence a preference, to pay the Yankee bonds,
15 right?

16 A That's a legal opinion. I don't know about that.

17 Q Okay. Let's take away the word "preference." They
18 preferred to pay the Yankee bonds, didn't they?

19 A Apparently so, yes.

20 Q They paid them even over your objection?

21 A That's correct.

22 Q But again, you, Mr. Patton, nobody on that committee, the
23 restructuring committee had a veto, right?

24 A Well, we objected to it. We never gave approval to it.

25 They went ahead and did it without us, so --

1 Q Which they're allowed to do, right?

2 A I guess that's why we're here.

3 Q Well, I mean, certainly that's the way corporations run.

4 They run on a board of directors, right?

5 A Well, the corporations I've been on didn't run that way.

6 Q They run autocratically?

7 A Well, they run -- they take the advice of the board and
8 usually go by it, unless there's a definite reason for not doing
9 it, which was never explained to the board.

10 Q Okay. And so the advice of the board here, the board's
11 advice, what they were telling the world is, "We're going to pay
12 the Yankee bonds," right?

13 A The board never explained to the restructuring committee why
14 they wanted to pay their Yankee bonds.

15 Q Fair enough. In your years as a, quote, restructuring
16 expert, have you ever seen a company prefer one creditor over
17 another?

18 A I've seen the situation where -- in my restructuring
19 experience, where we filed with the court the ability to pay
20 certain creditors. For example, at America West, we paid fuel
21 vendors in order to get fuel to continue operations. And that
22 was allowed by the court.

23 Q All right. Well, let's talk about before the court action.
24 When you were CFO of America West, they filed bankruptcy on your
25 watch, didn't they?

1 A Yes, they did.

2 Q And during the 90-day period, prior to filing bankruptcy for
3 America West on your watch, you saw to it that certain creditors
4 were paid during that 90-day period, didn't you?

5 A Certain creditors were paid during that 90-day period, and
6 then in the bankruptcy process, any of those that were not
7 supposed to be paid, we ended up getting the money back.

8 Q But you didn't breach your fiduciary duty when you were
9 chief financial officer of America West making payments to
10 creditors in that 90-day period, did you?

11 A Because we weren't in a position to file bankruptcy during
12 that 90-day period prior.

13 Q You didn't breach your fiduciary duty when you paid a
14 preference, did you?

15 A I wouldn't call it a preference. We were paying ordinary
16 course creditors at the time, until two days prior to the
17 bankruptcy.

18 Q Well, payment of a preference on its own is not a breach of
19 fiduciary duty, is it?

20 A That's a legal opinion. I can't speak to that.

21 Q Okay. Do you agree with me, sir, that the payment of the
22 Yankee bonds did not attribute to the bankruptcy of ASARCO?

23 A I don't know if I can answer it this way, but I smoked for
24 21 years. If I'm diagnosed with lung cancer, can I say it was
25 because I smoked for 21 years? I don't know. But I think if

1 you take \$100 million out of a company that is not particularly
2 viable at the time, it has some impact on it. I don't know
3 exactly when.

4 Q But that's all speculation on your part, right?

5 A That would be assumption on my part.

6 Q Okay. Let's talk about reasonably equivalent value.

7 You'll agree with me that the SPCC shares were the best
8 asset to use for the restructuring of ASARCO, correct?

9 A Well, I think they were the best asset that ASARCO had.

10 Q And the best thing to use in restructuring, correct?

11 A Well, it would have been the best thing to use in
12 restructuring, yes. That's one of the reasons why I thought
13 they should file bankruptcy and use it in restructuring.

14 Q Okay. Let's look at Defendant's Exhibit 488 at Bates Label
15 page AMC0002817, the second full paragraph.

16 Now, sir, I'll read that to you. It says: "Whereas, the
17 board of directors of the corporation has been presented with
18 the opinion of Ernst & Young relating to the reasonably
19 equivalent value of the consideration to be received for the
20 shares as contemplated in the consent decree."

21 Did I read that correctly?

22 A Yes, you did.

23 Q And the corporation referenced in that paragraph means
24 ASARCO, correct?

25 A That's my assumption.

1 Q And the shares means the 43,348,949 shares of Class A common
2 stock of Southern Peru Copper Corporation, correct?

3 A That's correct.

4 Q And Ernst & Young had concluded that the amount paid by
5 ASARCO for the SPCC shares was a reasonably equivalent value for
6 those shares, correct?

7 A That was my understanding.

8 Q Now, Ernst & Young is a reputable, nationally recognized
9 firm held in high esteem for making these assumptions?

10 A Yes.

11 Q You relied on that, correct?

12 A Yes, I did.

13 Q And on March 7th, 2003, exercising your fiduciary duties and
14 responsibilities, you believed that the consideration paid by --
15 paid to ASARCO by AMC in order to receive the SPCC shares was a
16 reasonably equivalent value for those shares, didn't you?

17 A I didn't have a disagreement with the reasonably equivalent
18 value at that time, no.

19 Q And you certainly would not have executed the unanimous
20 consent had you thought otherwise, would you?

21 A Well, that's probably true.

22 Q Okay. Let's look at Plaintiff's Exhibit 188.

23 MR. WALLACE: Can you blow it up a little bit for
24 Mr. Frei to see? Get a little bit more on the screen, if you
25 would, please.

1 BY MR. WALLACE:

2 Q Do you recognize that, sir, as the Ernst & Young Corporate
3 Finance valuation?

4 A That's what it says.

5 Q Okay. You remember receiving this presentation by
6 Ernst & Young on valuation of the SPCC shares, don't you?

7 A I believe that's true.

8 Q Please turn to Bates stamp page ASA00019850 on Exhibit 188.
9 And I want to focus your attention on the first full paragraph.

10 MR. WALLACE: Okay. Can you make it a little larger?

11 Thank you.

12 BY MR. WALLACE:

13 Q I'll read it: "Based on the foregoing and reliance thereon,
14 it is our opinion as of the date of this letter that assuming
15 the transaction is consummated as proposed, the value of the
16 consideration to be received by the company for the stock
17 interest in connection with the transaction is greater than the
18 fair market value of the stock interest as of December 31st,
19 2003 [sic], and therefore constitutes reasonably equivalent
20 value and fair consideration."

21 Did I read that correctly?

22 A No.

23 Q What --

24 A You said 2003. It says 2002.

25 Q I -- pardon me. Thank you for correcting me.

1 Other than that, did I read the document correctly?

2 A Yes.

3 Q You believed that ASARCO was paying greater than the fair
4 market value for the shares because you relied on
5 Ernst & Young's opinion, didn't you?

6 A Well, that was not a concern of mine at the time. I did
7 rely on that, but we hadn't gotten any of the information we
8 asked for to approve the sale, so --

9 Q To approve the sale of what?

10 A Of the SPCC shares.

11 Q But you believed that it was a reasonably equivalent value
12 even greater than fair market value, didn't you?

13 A I didn't disagree with the value. I disagreed with the use
14 of proceeds that we were waiting for, for Ernst & Young to
15 verify.

16 Q Okay. Fair enough. Fair enough. So let's split that up a
17 little bit.

18 You don't disagree -- sitting here today even, you don't
19 disagree that ASARCO paid reasonably equivalent value for the
20 SPCC shares or even greater than fair market value, do you?

21 A Well, I -- sitting here today, I don't know what all has
22 transpired since then. At the time that this was written, I
23 didn't disagree with it.

24 Q Okay. What you disagreed with is what they used those funds
25 for after the transaction, correct?

1 A Well, what we were waiting for was the source of funds
2 coming from the acquisition of that stock to determine whether
3 or not ASARCO had sufficient liquidity to continue to operate.

4 Q That doesn't answer my question, so I'll ask it again. And
5 I asked a sloppy question. I'll gladly admit that, Mr. Frei. I
6 do that a lot, so pardon me.

7 You believed then that they paid more than fair market value
8 and reasonably equivalent value for the SPCC shares, didn't you?

9 A I had no reason to question the value at that time, no.

10 Q Sitting here today, you have no reason to question that
11 either, do you?

12 A Well, not from what I've seen, no.

13 Q Okay. Fair enough. Let's go back to Defendant's Exhibit
14 488, and let's look at --

15 MR. WALLACE: If we could split the screen, both pages,
16 Bate stamped 2816 and 2820.

17 BY MR. WALLACE:

18 Q I know you can't read that, but I'll just -- it's hard to
19 read, but that's the unanimous consent, correct?

20 A I -- yeah, I wouldn't disagree with that.

21 Q Okay. And on page 2820 where all the signatures are there,
22 that's your signature, right? Can I --

23 A Yes, that's my signature. This is the fourth or fifth
24 version I've seen, one with a date, without a date, with my
25 name, without my name. I'm sorry, I --

1 Q Sure. And Mr. Terrell was good enough to walk through with
2 you different iterations of what this document may have looked
3 like at different times, but you certainly don't say that's a
4 forgery of your signature, do you?

5 A No, I don't.

6 Q You signed that document, didn't you?

7 A When I signed the document, there was no names on it besides
8 mine.

9 Q Fair enough. But you signed it, didn't you?

10 A I signed a consent document. I can't -- I can't confirm or
11 deny that that was the document, what it looked like when I
12 signed it, assuming that none of those other names were on it.

13 Q But -- okay. I don't need to go down that road.

14 It's not a forgery, is it, your signature?

15 A It's not -- doesn't appear to be a forgery of my signature,
16 no.

17 Q And you made no changes to the unanimous consent, right?

18 A No.

19 Q You could have, right?

20 A Well, at the time I signed it, we were waiting for other
21 information to come about, so I --

22 Q Exactly. And exercising your fiduciary duties, you could
23 have put by your signature a star or a notation or something,
24 effective only following another meeting of the restructuring
25 committee, or effective only after receipt of information,

1 correct?

2 A Well, there was enough e-mails and documentation on the fact
3 that we needed another restructuring committee before it was
4 approved. I didn't think I needed to put it next to my name.

5 Q So you gave this to the secretary of Genaro Larrea?

6 A I don't know if it was the --

7 Q You just entrusted her to have --

8 A -- secretary of Genaro Larrea. It was a gal sitting in the
9 front, out in the lobby of ASARCO. If that's his secretary,
10 that's who it was.

11 Q Okay. Well, when you executed this consent decree -- excuse
12 me. Let me start over.

13 When you executed this unanimous consent, you knew that the
14 consent decree had a provision for the payment of the Yankee
15 bonds in it, didn't you?

16 A I knew that the -- the consent decree said that \$50 million
17 of that may be used, and that that could be in the form of a
18 loan from AMC.

19 Q But you'd recognized that the consent decree, at the time
20 you signed this unanimous consent -- and the purpose of signing
21 this unanimous consent was to enter the consent decree, in part,
22 contained a provision for the payment of the Yankee bonds,
23 didn't you?

24 A I don't really agree with that.

25 Q Well, let's look at Defendant's Exhibit 442. This is an

1 e-mail -- and she's going to blow it up here in a second -- from
2 Doug McAllister to you and Mr. Patton, correct?

3 A Yes.

4 Q And it's dated March 4, 2003, correct?

5 A Yes.

6 Q And three days later, you went in and signed the unanimous
7 consent, correct, on March 7th?

8 A The signature page, yes.

9 Q Okay. And what's attached to this e-mail?

10 A The consent decree.

11 Q Now, let's go to Exhibit No. 1. That's the consent decree,
12 correct?

13 A Uh-huh, yes.

14 Q Let's look at Bates page AMC0010743.

15 MR. WALLACE: Let's blow up paragraph 8, please.

16 BY MR. WALLACE:

17 Q It talks about the payment of the Yankee bonds, doesn't it?

18 A It says, "AMC may represent that it may choose to loan
19 ASARCO \$50 million solely for the purpose of satisfying in
20 part."

21 Q And you notice there's a difference between the 450 million
22 instead of the \$500 million, correct?

23 A There's a difference between a loan and paying it out of the
24 ASARCO cash, too.

25 Q That wasn't my question.

1 You realize that if the \$50 million is lent for the payment
2 of the Yankee bonds, the figure of \$500 million is reduced to
3 450 million, correct?

4 A That's what that says.

5 Q Okay. And three days later, having received this document
6 by e-mail from Mr. McAllister, the man you trusted, you went in
7 and signed the unanimous consent to make this effective, didn't
8 you?

9 A Because the reason for signing the signature page was to
10 position it once all the conditions were met.

11 I mean, I sign signature pages for 10Qs and 10Ks and
12 aircraft acquisitions that are positioned with people all around
13 the world, and they're sitting waiting for completion of the
14 transaction so they can be dated and put into effect.

15 Q Okay. I'm going to go back -- I'm almost done.

16 A Okay.

17 Q I hope that helps you.

18 I want to go back to a couple of things Mr. Terrell covered
19 with you.

20 I believe your testimony was -- and I won't quote you. I
21 can't write that fast -- is that fairly early on, you thought
22 they should -- they should file bankruptcy, but that you were
23 still open to ideas, right?

24 A That's correct.

25 Q That's really not true, is it?

1 A I don't agree with you.

2 Q From the very beginning, the moment you walked in the door
3 at ASARCO, you contemplated filing bankruptcy, didn't you?

4 A That's true, because --

5 Q So it wasn't anything you were considering or thinking about
6 or maybe you ought, maybe you ought not to?

7 A Well, the reason that we didn't -- that I didn't push for
8 bankruptcy, because Mr. Larrea initially indicated to me that
9 this was a big stigma, and they wanted to avoid bankruptcy. So
10 we were allowing -- or I was allowing the receipt of information
11 that would indicate a way of avoiding bankruptcy other than what
12 appeared to be on the surface of what was presented to me.

13 MR. WALLACE: Your Honor, I'll pass the witness.

14 MR. TERRELL: Your Honor, we have no redirect. May the
15 witness be excused, or do you want to do the exhibits before
16 he's excused?

17 THE COURT: I'd rather do the exhibits while he's still
18 here.

19 MR. TERRELL: All right. Then let's do that.

20 I have two to offer that I questioned Mr. Frei about. The
21 first is Plaintiff's Exhibit 266. It's the March 27 e-mail from
22 Mr. Patton to Mr. Frei. And then I have Exhibit 265, which is
23 Mr. Frei's response. And he's testified about them.

24 MR. WALLACE: 266 and 265?

25 MR. TERRELL: Yes.

1 MR. WALLACE: No objection.

2 THE COURT: All right. They'll be admitted.

3 MR. WALLACE: Your Honor, we also have a number of
4 exhibits that the defendants offer.

5 MR. TERRELL: Are they the same ones in your book?

6 MR. WALLACE: They are -- well, not all of them, though.

7 Defendant's Exhibit 1, the consent decree, Plaintiff's
8 Exhibit 188, the Ernst & Young letter. Defendant's Exhibit 442,
9 Defendant's Exhibit 555, Defendant's Exhibit 695, and
10 Defendant's Exhibit 488.

11 MR. TERRELL: We object to 488 and 555, and let me
12 explain why, Your Honor.

13 Defendant's Exhibit 488 is a June 2, 2003 letter internal --
14 well, from somebody named Ligia Sandoval Parra of Grupo Mexico
15 to somebody named Michelle Pechan at ASARCO that is produced out
16 of Americas Mining's file that is -- and then attached to it is
17 a -- one of the forms of consent.

18 Our objection to this is that it's hearsay. This witness
19 did not verify that this document was authentic at all. And
20 it's -- I have a hearsay objection. There's no business records
21 affidavit submitted in support of these facts. Ms. Sandoval
22 Parra has never testified. If she wants to come in here and
23 testify, that's fine. We can cross-examine her about it. But
24 this document is hearsay.

25 THE COURT: It's not a business record of the plaintiff?

1 MR. WALLACE: May I --

2 MR. TERRELL: No. This is not produced by us. This is
3 strictly from Americas Mining's file.

4 MR. WALLACE: May I respond, Your Honor?

5 THE COURT: Yeah.

6 MR. WALLACE: If Mr. Terrell's objection is over the
7 first page of Exhibit 488 Bates labeled 2815, we'll be happy to
8 withdraw that. But with respect to the rest of the document, it
9 is the action, in writing, by unanimous consent of the board of
10 directors.

11 Mr. Frei testified to it at length. Mr. Frei testified that
12 that's his signature that appears on Bates Stamp 2821. Mr. Frei
13 testified that it's not a forgery. This is clearly relevant.
14 He clearly testified about it. And the test under relevance, it
15 comes in, and we'll simply withdraw the hearsay that may appear
16 on the June 2nd, 2003 letter written by Ms. Parra.

17 MR. TERRELL: The hearsay objection goes to the whole
18 document. This all comes from Americas Mining's file, not
19 ASARCO's file. To remind the court -- I'm sure I don't need to,
20 Mr. Frei said that that was his signature, but that nobody
21 else's signature was on it when he signed it. He did not verify
22 this document as anything that was a corporate act, and it
23 doesn't come from ASARCO's files. The whole thing is hearsay.

24 THE COURT: Okay. I'm going to sustain the objection,
25 although I'm not convinced it's not relevant and may come in

1 with some other witness that you can prove up.

2 MR. TERRELL: My other objection is to --

3 THE COURT: Right now, you don't have -- you haven't
4 laid any foundation for it, other than he said it's his
5 signature, and that doesn't get it by the hearsay.

6 MR. TERRELL: I apologize for interrupting the court.

7 THE COURT: Go ahead.

8 MR. TERRELL: My other objection is to Exhibit 555.

9 This is the Jack Kinzie to Daniel Tellechea, November 11,
10 2004, Baker Botts' memo. This is my standard objection that
11 I've made to all of Baker Botts' proffered evidence, that it is
12 irrelevant. And I'll say it's especially irrelevant, as far as
13 this witness is concerned, who had never seen the document
14 before, left a year-and-a-half before the document was written.

15 THE COURT: Let me -- is that -- is that the only other
16 document?

17 MR. TERRELL: That's the only other one.

18 THE COURT: All right.

19 MR. WALLACE: May I respond, Your Honor?

20 THE COURT: Hold on just a second.

21 Okay. So we've admitted the two plaintiffs documents. I'm
22 going to admit Defendant's 1, Plaintiff's 188, Plaintiff -- I
23 mean, Defendant's 442, Defendant's 555 -- I'm sorry. 555 is the
24 one we're looking at -- Defendant's 695.

25 And so I've sustained, at least so far, the objection to

1 488. And with reference to this one, I'm going to look at it.
2 I want to read the whole thing.

3 MR. WALLACE: Certainly, Your Honor. May I just --
4 would you entertain my argument afterwards?

5 THE COURT: Yeah.

6 MR. WALLACE: Okay.

7 THE COURT: I'm not -- I'm not -- because all we looked
8 at was one blown-up paragraph. I want to look at the whole
9 document.

10 MR. WALLACE: Certainly, Your Honor. And I encourage
11 you and invite you to do so. I will just add not to conclude
12 with my arguments as to why it's admissible, but as counsel for
13 plaintiffs has repeatedly asked and obtained documents to be
14 entered into evidence, and this court has allowed documents to
15 be entered into evidence, I think their argument is: Well,
16 judge, if I show it to him, and he testifies that he's never
17 seen it before, well, then it's relevant enough to come in. And
18 that's been the argument.

19 THE COURT: Well --

20 MR. TERRELL: That's not what we're saying.

21 THE COURT: I don't think that's quite the same. I'm
22 not buying into that necessarily, but I'm not -- I want to read
23 the whole document.

24 MR. WALLACE: Certainly.

25 MR. TERRELL: One thing when you're thinking about that,

1 Judge, it's not an element of our case as to why ASARCO
2 ultimately proved -- went into bankruptcy or not. I mean,
3 frankly, if --

4 THE COURT: I don't know if it's an element of your
5 case, but it may very well be an element of their defense.

6 MR. WALLACE: Yes, Your Honor.

7 MR. TERRELL: May Mr. Frei be excused, Your Honor?

8 THE COURT: Any reason?

9 MR. WALLACE: No reason Mr. Frei should not be able to
10 go home.

11 THE COURT: Okay. All right. What's going to be next,
12 Mr. Terrell?

13 MR. TERRELL: Well, Your Honor, I wish I could tell you
14 it's a live witness, but it's not. It is a very long video of
15 Mr. Lyon, and in particular -- oh, I'm sorry, we have two
16 depositions on written submission first, and then we have a
17 video deposition of Mr. Lyon.

18 THE COURT: Okay.

19 MR. RODRIGUEZ: The first written submission is for
20 Ernesto Duran. We have approximately 15 pages of testimony to
21 offer. And in connection with that testimony, plaintiffs offer
22 five exhibits which are PX 110, PX 248, PX 931, Plaintiff's
23 Exhibit 970, and Plaintiff's Exhibit 974. And we offer those at
24 this time.

25 MR. TERRELL: Your Honor, may I be excused for one

1 moment?

2 THE COURT: (Nod indicated.)

3 MR. COHEN: Your Honor, could we have a moment to look
4 through this?

5 THE COURT: Why don't we do this. What's your next one,
6 Mr. Rodriguez?

7 MR. RODRIGUEZ: The next individual is Brent Benham. He
8 was a manager at Arthur Andersen. And we have approximately 26
9 pages combined between the plaintiffs and the defendant. The
10 plaintiffs offer seven exhibits with that particular deposition.

11 THE COURT: All right. Here's what we'll -- let's take
12 about a 15-minute break. During that break, you-all look at it,
13 make sure we're on the same page and we don't have any
14 objections. That will give me also time to read Defendant's
15 555. And then we'll come back and talk about all three of those
16 things, and then we'll launch into the next exciting video.

17 MR. COHEN: Thank you, Your Honor.

18 MR. RODRIGUEZ: Thank you.

19 (Recess)

20 THE COURT: All right. Be seated.

21 All right. Mr. Rodriguez, we were talking about
22 depositions.

23 MR. RODRIGUEZ: First we have the deposition of Ernesto
24 Duran, and we have seven exhibits which I have listed again as
25 Plaintiff's Exhibits 9 -- no, excuse me. Five exhibits with

1 Mr. Duran, Plaintiff's Exhibits 110, 248, 931, 970, and 974, and
2 we offer those into evidence.

3 MR. COHEN: No objection, Your Honor.

4 THE COURT: All right. Those will be admitted then.

5 MR. RODRIGUEZ: Second, we have the deposition of Brent
6 Benham. Let me hand the court its copies of the binders. And
7 with the deposition of Brent Benham, plaintiffs offer seven
8 exhibits, which are Plaintiff's Exhibits 9, 66, 75, 306, 528,
9 658, and 696.

10 THE COURT: Say those again. 9? Repeat what you said.
11 9 and 66.

12 MR. RODRIGUEZ: Sure. 9, 66, 75, 306, 528, 658, 696.

13 MR. COHEN: And defendants would offer DX 181, DX 1071,
14 PX 1150, PX 664.

15 MR. RODRIGUEZ: We have no objection to those.

16 THE COURT: Okay. They'll be admitted as well.

17 MR. RODRIGUEZ: Thank you.

18 THE COURT: All right. Let's talk about Defendant's
19 Trial Exhibit 555. As I understand, the objection is relevance,
20 and I'm going to overrule that objection.

21 MR. TERRELL: All right, sir.

22 THE COURT: Now, there may be arguments as to the weight
23 because this is clearly a November 2004 document. And perhaps
24 the magic time is March 31st, 2003, but we've let in arguments
25 about solvency in 2002 and 2001, and this is just the opposite

1 of that argument, so I'm letting it in, and we can argue about
2 the relevance -- the weight to be given it.

3 MR. COHEN: Thank you, Your Honor.

4 MR. TERRELL: Your Honor, at this time we call Grant
5 Lyon by video deposition. Mr. Kemp Sawers, my partner, will
6 handle this video deposition.

7 MR. SAWERS: Your Honor, Mr. Lyon was the financial
8 adviser with Ernst Young Corporate Finance, EYCF. His video
9 deposition clip total time is three hours and 43 minutes.
10 Plaintiffs have designated one hour and 28 minutes. Defendant
11 has designated two hours and 15 minutes. We have the binders
12 for the court with the exhibits referenced in Mr. Lyon's
13 testimony.

14 THE COURT: All right. Just so y'all are aware of my
15 schedule, we won't complete this tonight. I've got something I
16 need to be at at 6:30. So we'll go as long as we can -- as long
17 as we can go. Ironically, the thing I'm going to will be less
18 enjoyable than this.

19 MR. TERRELL: May we ask you about that tomorrow?

20 THE COURT: Yeah. So --

21 MR. SAWERS: Just tell us when, and we'll hit the pause
22 button.

23 THE COURT: Okay. Let me add, if you can hold it just
24 for a second. I mean, if this is going to play straight
25 through, I mean, it will not offend me if some of y'all need to

1 leave and do something more productive while I watch this. Just
2 don't distract me.

3 All right. Go ahead.

4 (Videotaped deposition of Grant Lyon)

5 THE COURT: Are we at a stopping place? All right.
6 Let's continue this in the morning. Let's start at 9:30 again.

7 Mr. Terrell, what are we looking for besides finishing this
8 deposition?

9 MR. TERRELL: Your Honor, tomorrow after this
10 deposition, there is a two hour and 23 minute video deposition
11 of Genaro Larrea followed by the live testimony of Mr. Av Tucker
12 of Navigant.

13 THE COURT: All right. Well, I may have spoken too soon
14 about my subsequent meeting tonight. This may make my meeting
15 look good.

16 All right. We'll see y'all in the morning. Thank you.

17 * * *

18 (End of requested transcript)

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above matter.

Date: May 13, 2008

Signature of Court Reporter
Barbara Barnard

EXHIBIT C

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

<hr/>	
ASARCO LLC AND SOUTHERN PERU)
HOLDINGS CORPORATION)
)
VS.) CIVIL ACTION NO.
) B-07-018
)
AMERICAS MINING CORPORATION)
<hr/>	

BENCH TRIAL
BEFORE THE HONORABLE ANDREW S. HANEN
MAY 20, 2008
MORNING SESSION

Transcribed by: BARBARA BARNARD
Official Court Reporter
600 E. Harrison, Box 301
Brownsville, Texas 78520
(956) 548-2591

1 THE COURT: All right. Be seated, please.

2 Before we start, let me talk about the documents that have
3 been asked to be sealed.

4 Plaintiffs 593 and 967 are basically memos or correspondence
5 which have kind of the same information we faced earlier which
6 talk about various asbestos settlements.

7 MR. SAWERS: That's correct. When you analyze
8 Plaintiff's Exhibit 1066, these same settlements were actually
9 contained there, and --

10 THE COURT: Is there any reason why we just can't redact
11 these two and have the same ruling and just redact these two?

12 MR. SAWERS: I think that would be find.

13 THE COURT: Any objection, Mr. Antweil?

14 MR. ANTWEIL: None from the defendants, Your Honor.

15 THE COURT: And we know the intervenors object to that,
16 but as I said, I'm doing it for this hearing, and I'm going to
17 defer to Judge Schmidt or whomever eventually rules in that case
18 as to whether they eventually get it.

19 Now, Plaintiff's 1045 looks like it's some kind of perhaps a
20 PowerPoint presentation that was given to the -- my guess is the
21 insurers of ASARCO, and --

22 MR. SAWERS: I think it was internal to ASARCO, is my
23 understanding, Your Honor. Presentation -- a presentation made
24 to ASARCO.

25 THE COURT: Okay. It has some information that's

1 historic and that everybody knows, but it -- I'm trying to
2 figure out what's the plaintiff's position with regard to
3 whether this could be redacted successfully?

4 MR. SAWERS: Well, we haven't looked through it, Your
5 Honor. Our analysis is -- our position is this was prepared by
6 an outside consultant and is an assessment of ASARCO's asbestos
7 liabilities as of April 2003.

8 This particular report has been kept from the asbestos
9 committee in other litigation in the bankruptcy proceeding and
10 is prepared in connection with the defense of certain claims.
11 Those claims are ongoing, discusses potential exposure, and
12 it's, therefore, privileged.

13 THE COURT: Mr. Antweil, what's the defendant's
14 position.

15 MR. ANTWEIL: We're fine with everything.

16 THE COURT: Okay. This one I may actually do the whole
17 document because I think while there clearly is some information
18 that's not confidential or perhaps is out in there, the whole
19 presentation, it's going to be hard to cut and paste that.

20 MR. SAWERS: Your Honor, the other ones are actually
21 contained in Navigant's report and work papers.

22 THE COURT: Right. And that's -- that's kind of where
23 I'm to now.

24 MR. SAWERS: Right. And what I would propose is we
25 present the court with our proposed redactions. It's the same

1 issue that the court addressed in ruling on Plaintiff's
2 Exhibit 1066, and we have highlighted the actual portions that
3 we're talking about redacting for purposes of the record.

4 THE COURT: Okay. You have or you're going to?

5 MR. SAWERS: We have, Your Honor.

6 THE COURT: Oh, you have it in your hand?

7 MR. SAWERS: I have it.

8 THE COURT: Ah, okay. Because I was going to say,
9 because I read this last night, and it didn't seem like it
10 was -- I was sleepy when I read it, so maybe I missed the
11 highlighting.

12 MR. SAWERS: The first one is Plaintiff's Exhibit 1266,
13 which is a portion of the rebuttal report of Messrs. Tucker and
14 Schwickerath.

15 THE COURT: Well, the first -- well, I'm just looking at
16 the two portions you've highlighted here, and it seems like
17 we've talked about all of this in open court.

18 MR. SAWERS: We have, Your Honor, and it is also
19 consistent with the document we presented in Plaintiff's
20 Exhibit 1066. We understand Your Honor's ruled on that. We're
21 just renewing our request for this particular document that
22 those portions be kept under seal.

23 THE COURT: Let me look -- I'm going to think about this
24 one because 1066 was a little bit different. It had specific
25 numbers with specific companies, and where this is just a

1 general statement basically about what we've talked about, how
2 the Yankee bonds were paid.

3 MR. SAWERS: This document, Your Honor, is actually the
4 expert report of Tucker and Schwickerath, and we've again
5 highlighted the excerpts that we believe should be redacted for
6 purposes of the public file.

7 THE COURT: Okay. I'm going to -- with regard to 1217,
8 I'm going to grant that. And if you will redact these portions
9 that are highlighted.

10 MR. SAWERS: Okay.

11 And the last one, Your Honor, is Plaintiff's Exhibit 1301.
12 These are Navigant work papers, and you will see there is a
13 chart there that contains a summary of insurance settlements,
14 some of which are now in the record, based on the court's ruling
15 on Plaintiff's Exhibit 1066.

16 The ones we've highlighted are the ones that -- that are
17 not, that are -- involve ongoing disputes.

18 So we would ask, with respect to this exhibit, that the
19 court redact those portions that we've highlighted consistent
20 with the court's ruling on Plaintiff's Exhibit 1066.

21 THE COURT: All right. I'm going to grant that as to
22 1301.

23 Okay. I'm going to look at the first one. But the last
24 two, which are part of the Tucker and Schwickerath report, I've
25 granted.

1 MR. SAWERS: Thank you, Your Honor.

2 THE COURT: And then with regard to the first two we
3 talked about, we'll redact those with regard to specific
4 insurance settlements.

5 MR. NEWTON: Your Honor, Jacob Newton. Just quickly. I
6 understand your ruling today. I just want to clarify that none
7 of your rulings prevent the subsidiary committee or maybe the
8 futures claim rep from moving in the bankruptcy court to argue
9 that we are entitled to this, kind of like what you did with
10 1066.

11 THE COURT: That's correct. That's correct.

12 MR. NEWTON: Thank you, Your Honor.

13 THE COURT: No, I'm going to defer to the bankruptcy
14 court or whatever judge ends up with that dispute. As I said,
15 one of the reasons I'm doing this is because I don't know the
16 issues that are in dispute in that, and I don't want to make a
17 ruling that can't be fixed.

18 Mr. Terrell?

19 MR. TERRELL: Good morning, Your Honor. If Your Honor
20 is ready to proceed, we're ready to call a live witness.

21 THE COURT: I am ready.

22 MR. TERRELL: The plaintiffs call our expert David
23 Schwickerath to testify, and Mr. Sawers will handle this.

24 THE COURT: Mr. Stone?

25 MR. STONE: Good morning, Your Honor. For the record, I

EXHIBIT D

Jacob L. Newton

From: Jacob L. Newton
Sent: Friday, October 10, 2008 3:28 PM
To: 'judith.ross@bakerbotts.com'
Cc: Peter D'Apice
Subject: SPCC documents

Judy,

In general, we'd like to make sure that all the asbestos-related evidence and testimony that ASARCO relied on in the SPCC lawsuit is available for use at the confirmation hearing. This would include, without limitation, the following:

1. All exhibits admitted at trial, including the handful of exhibits that were either partially sealed or entirely sealed. One notable document in this broad category is the London Market Insurers Asbestos Claim Presentation prepared by LECG dated April 30, 2003, wherein LECG projected "Asbestos Products – Bodily Injury damages through 2051" to total "approximately \$1 billion." This document was introduced by ASARCO at the SPCC trial as PX01045.
2. Any other asbestos-related documents that were exchanged or otherwise produced in discovery.
3. All asbestos-related deposition and trial testimony.
4. All expert reports that discuss asbestos in any way, particularly the unredacted version of the Tucker and Schwickerath Expert Report.

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EXHIBIT E

Jacob L. Newton

From: david.genender@bakerbotts.com
Sent: Monday, April 27, 2009 3:00 PM
To: Jacob L. Newton
Cc: Peter D'Apice; Cliff I. Taylor; rbattaglia@obht.com
Subject: RE: asbestos-related exhibits

Attachments: DAL01-#1054466-v1-2d Amended Priv Log4.pdf



DAL01-#1054466-v
1-2d Amended P...

PX00593 deals with environmental insurance - I will not produce it in connection with asbestos estimation.

I'll need to talk to the Brownsville folks, but I understand that redacted copies were distributed at trial. I don't have them personally. Fernando is on his way back to the office - let me check with him.

PX01301 - I am looking at this again and will get back to you on it.

Log is attached.

David M. Genender
Baker Botts L.L.P.
2001 Ross Ave., Suite 800
Dallas, Texas 75201
214.953.6936
214.661.4936 (fax)
214.263-4666 (cell)

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

From: Jacob L. Newton [mailto:newton@sbep-law.com]
Sent: Monday, April 27, 2009 1:15 PM
To: Genender, David
Cc: Peter D'Apice; Cliff I. Taylor; rbattaglia@obht.com
Subject: RE: asbestos-related exhibits

593 and 1301 may or may not be responsive or relevant to anything in the derivative asbestos estimation; my point is that we simply don't know. Respectfully, we would like to review the redacted version of those documents, which were introduced into evidence by ASARCO at the public trial in Brownsville, so that we can make that determination ourselves.

I understand your position that you may not have to produce the redacted version in the specific context of the derivative asbestos estimation. However, these are public documents that I am asking about, and given the extremely tight schedule for the derivative asbestos estimation, I would appreciate your assistance in providing us with copies.

Also, when can we expect your log of the handful of documents we are dealing with?

Jacob L. Newton
Stutzman, Bromberg, Esserman & Plifka,
A Professional Corporation
2323 Bryan Street, Suite 2200

Dallas, Texas 75201-2689
Telephone: (214) 969-4900
Facsimile: (214) 969-4999
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-----Original Message-----

From: david.genender@bakerbotts.com
[mailto:david.genender@bakerbotts.com]
Sent: Monday, April 27, 2009 12:58 PM
To: Jacob L. Newton
Cc: Peter D'Apice; Cliff I. Taylor; rbattaglia@obht.com
Subject: RE: asbestos-related exhibits

Respectfully, that's not how it works for 593 and 1301 - they are not responsive to any legitimate request and are not relevant to the asbestos estimation in any event.

We will log the others and you will see the privileges asserted.

My understanding was that redacted copies of exhibits that were not sealed were distributed at the trial, but I wasn't there - I will confirm.

David M. Genender
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Dallas, Texas 75201
214.953.6936
214.661.4936 (fax)
214.263-4666 (cell)

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

From: Jacob L. Newton [mailto:newton@sbep-law.com]
Sent: Monday, April 27, 2009 12:36 PM
To: Genender, David
Cc: Peter D'Apice; Cliff I. Taylor; rbattaglia@obht.com
Subject: RE: asbestos-related exhibits

David,

PX00593 and PX01301 were introduced partially under seal during the Brownsville trial. We never received the redacted version of these documents, so we don't have any information regarding these two documents. Please send over the redacted version and we will take a look; we may well agree with you that they are non-responsive.

On a related issue, please send us the redacted version of all the other partially redacted documents from the Brownsville trial as well, as we never received them either. My recollection is that PX01045 was the only document that was sealed in its entirety.

I believe PX01066 consists of settlements with insurance companies. On what basis do you claim that this document is privileged.

As for the other documents, on what basis do the Debtors' assert that PX00967, PX01045, and PX01217 are privileged?

Jake

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

From: david.genender@bakerbotts.com
[mailto:david.genender@bakerbotts.com]
Sent: Monday, April 27, 2009 10:44 AM
To: Jacob L. Newton
Cc: Peter D'Apice; Cliff I. Taylor; rbattaglia@obht.com
Subject: RE: asbestos-related exhibits

Jake,

We will log:

PX00967
PX01045
PX01066
PX01217

PX00593 is not responsive. We don't believe PX01301 is responsive either - why do you think it is?

David M. Genender
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214.661.4936 (fax)
214.263-4666 (cell)

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

From: Jacob L. Newton [mailto:newton@sbep-law.com]
Sent: Saturday, April 25, 2009 9:49 PM
To: Genender, David
Cc: Peter D'Apice; Cliff I. Taylor; rbattaglia@obht.com
Subject: RE: asbestos-related exhibits

Dave, the estimation materials are requested in RFP 102-107, and the insurance policies are requested in RFP 26, 27, and 59.

Jake

From: david.genender@bakerbotts.com
[mailto:david.genender@bakerbotts.com]
Sent: Friday, April 24, 2009 5:16 PM
To: Jacob L. Newton
Cc: Peter D'Apice; Cliff I. Taylor; rbattaglia@obht.com
Subject: Re: asbestos-related exhibits

I am happy to look into it. To which RFP(s) do you believe these docs are responsive? _____

From: Jacob L. Newton
To: Genender, David
Cc: Peter D'Apice ; Cliff I. Taylor ; RBattaglia@obht.com
Sent: Fri Apr 24 17:07:57 2009

Subject: asbestos-related exhibits

Dave,

The six documents identified below were introduced by ASARCO in the Brownsville trial either wholly or partially under seal. Moreover, PX 1045 (and possibly others) was specifically relied upon and cited in the expert report submitted by ASARCO's experts-Navigant Consulting. We believe that these documents relate to asbestos and are responsive to our outstanding Requests for Production, served some time ago in the derivative asbestos estimation proceeding. Given the time constraints, we would like ASARCO to supplement its responses to our RFP's by producing these documents by close of business on Tuesday, April 28, 2009.

PX00593

PX00967

PX01045

PX01066

PX01217

PX01301

Thanks,

Jacob L. Newton

Stutzman, Bromberg, Esserman & Plifka,

A Professional Corporation

2323 Bryan Street, Suite 2200

Dallas, Texas 75201-2689

Telephone: (214) 969-4900

Facsimile: (214) 969-4999

Email: newton@sbep-law.com

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EXHIBIT F

SUPPLEMENT TO SECOND AMENDED LOG OF ASARCO-ONLY PRIVILEGED DOCUMENTS – APRIL 30, 2009

Bates Range	Date	From:	To:	Description	Reason Withheld
N/A	05/08/2000	Peter Drucker	Vince Wildman and Greg Knapp	Memorandum re legal advice pertaining to dispute over cleanup costs at CAPCO facilities	AC
ASA00004156-4158	03/10/2003	Kevin McCaffrey	Douglas McAllister	Memorandum re legal advice pertaining to application of insurance proceeds to asbestos obligations	AC, CONF
ASA01986944-6975	04/30/2003	ASARCO Legal Counsel	ASARCO	Confidential, internal ASARCO PowerPoint presentation concerning settlement negotiation strategy for pending asbestos insurance litigation	AC, WP, SP (FRE 408), CONF
ASA00004239-4240	09/11/2003	Kevin McCaffrey	Douglas McAllister	Memorandum re legal advice pertaining to confidential insurance settlements	AC, CONF
ASA00003999/ ASARCOMR1310487	04/21/2003	Kevin McCaffrey	Douglas McAllister	Memorandum re legal advice pertaining to asbestos insurance management strategy	AC
ASA00003999-4000/ ASARCOMR1376801-802	04/21/2003	Kevin McCaffrey	Douglas McAllister	Memorandum re legal advice pertaining to asbestos insurance management strategy, including data from confidential insurance settlements	AC, CONF

AC = attorney/client privilege. WP = work product privilege. SP = settlement privilege. CIP = common interest privilege. CONF = confidential.

SECOND AMENDED LOG OF PRIVILEGED DOCUMENTS

Page 1 of 2

DAL01:1054466.1

ASARCOMRI385355-357	03/02/2004	Doug McAllister and Karen Paul	Daniel Tellechea and Armando Ortega	Memorandum re legal advice pertaining to resolution of alleged asbestos liabilities	AC, WP, CIP
N/A	12/14/2007	Navigant Consulting, Inc.	ASARCO LLC	Expert Report of Avram S. Tucker and David A. Schwickerath containing data from confidential insurance settlements	WP, CONF

AC = attorney/client privilege. WP = work product privilege. SP = settlement privilege. CIP = common interest privilege. CONF = confidential.

SECOND AMENDED LOG OF PRIVILEGED DOCUMENTS

EXHIBIT G

BAKER BOTTS LLP

2001 ROSS AVENUE
DALLAS, TEXAS
75201-2980

TEL +1 214.953.6500
FAX +1 214.953.6503
www.bakerbotts.com

AUSTIN
BEIJING
DALLAS
DUBAI
HONG KONG
HOUSTON
LONDON
MOSCOW
NEW YORK
PALO ALTO
RIYADH
WASHINGTON

November 6, 2008

BY ELECTRONIC MAIL

George Royle V
Latham & Watkins LLP
885 Third Avenue, Suite 1000
New York, New York 10022

Thomas E. O'Brien
TEL +1 214-953-6934
FAX +1 214-953-4934
tom.obrien@bakerbotts.com

Re: *ASARCO Master, Inc. and ASARCO LLC v. Montana Resources, Inc.*
Adversary No. 07-02024; in the United States Bankruptcy Court
for the Southern District of Texas

Dear George:

I write in response to your letters of October 30 and 31, 2008.

First, as I explained in my letters of October 23 and 27, 2008, the documents bates-labeled ASARCOMRI272334-ASARCOMRI272337, ASARCOMRI310487-ASARCOMRI310487, and ASARCOMRI376801-ASARCOMRI376802 are subject to the attorney-client and/or work product privilege, and were inadvertently produced. The document bates-labeled ASARCOMRI272334-ASARCOMRI272337 is a draft letter to Larry Simpkins, President of Montana Resources, Inc., proposing a settlement for resolving outstanding issues arising from ASARCO LLC and Montana Resources, Inc.'s partnership in Montana Resources. The documents bates-labeled ASARCOMRI310487-ASARCOMRI310487 and ASARCOMRI376801-ASARCOMRI376802 are duplicates of a confidential memorandum regarding ASARCO's asbestos liabilities prepared in anticipation of litigation. Plaintiffs have included these documents on their privilege log.

Second, the document bates labeled ASARCOMRI385355-ASARCOMRI385357 is also subject to the attorney-client and/or the work product privilege, and was also inadvertently produced. That document is a confidential memorandum from in-house counsel to client personnel regarding ASARCO's asbestos claims. Plaintiffs have included the document on their privilege log. Please confirm that you have destroyed all copies of the document in your or your experts' possession, custody, or control.

Third, my cover letter of October 23, 2008 enclosing Plaintiffs' Fourth Production of Documents contained a typographical error. The bates range of Plaintiffs' Fourth Production of Documents begins at ASARCOMRI337202 and ends at ASARCOMRI388354.

Finally, in good-faith reliance on your representation that the document bates-labeled MRI001278-MRI001281 is privileged, we have destroyed all copies of the document within our possession, custody, or control. Please produce a redacted version of the document with the attorney-client information removed, and include the document on your privilege log.

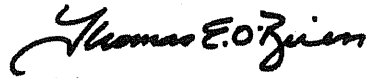
BAKER BOTTS LLP

George Royal V

- 2 -

November 6, 2008

Regards,

A handwritten signature in black ink that reads "Thomas E. O'Brien". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas E. O'Brien

TEO:

BAKER BOTTS LLP

George Royal V

- 3 -

November 6, 2008

cc: **KING & SPALDING LLP**

Henry J. Kaim
1100 Louisiana, Suite 4000
Houston, Texas 77002

REED SMITH LLP

Derek J. Baker
Nipun Patel
Jennifer Knox
2500 One Liberty Place
Philadelphia, PA 19103

OPPENHEIMER, BLEND, HARRISON & TATE, INC.

Debra L. Innocenti
Robert K. Sugg
711 Navarro, Suite 600
San Antonio, Texas 78205

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.

Jacob L. Newton
2323 Bryan Street, Suite 2200
Dallas, Texas 75201

EXHIBIT H

Jacob L. Newton

From: Tom.OBrien@bakerbotts.com
Sent: Wednesday, April 22, 2009 5:04 PM
To: Jacob L. Newton; david.genender@bakerbotts.com; Peter D'Apice
Cc: RBattaglia@obht.com
Subject: RE: ASARCO v. Montana Resources, Inc.

Jake,

We decline to produce the documents referenced below because they are privileged. If you would like us to produce an updated privilege log listing these documents, please let us know.

Regards,
Tom

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

From: Jacob L. Newton [mailto:newton@sbep-law.com]
Sent: Wednesday, April 22, 2009 1:03 PM
To: O'Brien, Tom; Genender, David; Peter D'Apice
Cc: RBattaglia@obht.com
Subject: RE: ASARCO v. Montana Resources, Inc.

Tom, as we discussed via phone, the Subsidiary Committee hereby requests production of the documents referenced below. I look forward to your response.

Thanks,
Jake

Jacob L. Newton
Stutzman, Bromberg, Esserman & Plifka,
A Professional Corporation
2323 Bryan Street, Suite 2200
Dallas, Texas 75201-2689
Telephone: (214) 969-4900
Facsimile: (214) 969-4999
Email: newton@sbep-law.com

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From: Tom.OBrien@bakerbotts.com [mailto:Tom.OBrien@bakerbotts.com]
Sent: Friday, November 07, 2008 4:46 PM
To: david.genender@bakerbotts.com; Peter D'Apice
Cc: Jacob L. Newton; RBattaglia@obht.com
Subject: RE: ASARCO v. Montana Resources, Inc.

Peter,

ASARCOMRI376801-802 also bears the bates label ASA00003999-4000

ASARCOMRI310487-487 also bears the bates label ASA00003999.

ASARCOMRI385355-357 bears no other bates label.

Please call me at 214-953-6934 if you would like to discuss.

Regards,
Tom

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

From: Genender, David
Sent: Friday, November 07, 2008 4:33 PM
To: 'Peter D'Apice'
Cc: Newton, Jacob; RBattaglia@obht.com; O'Brien, Tom
Subject: RE: ASARCO v. Montana Resources, Inc.

I have no idea. I'll check with Tom.

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

From: Peter D'Apice [mailto:DApice@sbep-law.com]
Sent: Friday, November 07, 2008 4:30 PM
To: Genender, David
Cc: Newton, Jacob; RBattaglia@obht.com
Subject: FW: ASARCO v. Montana Resources, Inc.

David, the attached letter from ASARCO to MRI refers to a couple of asbestos-related documents that we may or may not have received or reviewed at your offices during the alter ego production. Do these documents also bear a PP or BR or some other alter-ego contested matter bates-stamp so we can check? Thanks. Peter.

From: Tom.O'Brien@bakerbotts.com [mailto:Tom.O'Brien@bakerbotts.com]
Sent: Thursday, November 06, 2008 7:08 PM
To: George.Royle@lw.com; HKaim@KSLAW.com; dbaker@reedsmith.com; npatel@reedsmith.com; jknox@reedsmith.com; dinnocenti@obht.com; rks@obht.com; Jacob L. Newton
Cc: kemp.sawers@bakerbotts.com; Nelda.McGuire@bakerbotts.com; Vicky.Chapman@bakerbotts.com; Vivica.LaMarche@bakerbotts.com
Subject: ASARCO v. Montana Resources, Inc.

Counsel,

Please see the attached letter.

<<11_06_08 Letter to Royle.pdf>>
Regards,

Thomas E. O'Brien
BAKER BOTTS L.L.P. ■
2001 Ross Avenue
Dallas, Texas 75201-2980
Office: 214-953-6934
Cell: 214-683-7828
Fax: 214-661-4934
tom.obrien@bakerbotts.com

EXHIBIT I

Sander L. Esserman

From: jack.kinzie@bakerbotts.com

Sent: Friday, June 06, 2008 6:45 AM

To: Sander L. Esserman; David.Dain@usdoj.gov; Alan.Tenenbaum@usdoj.gov

Subject: Asbestos settlement

At the plan sponsor selection meeting I told your groups that I didn't seek board approval of the 750mm principal cash cap for asbestos and the residual environmental claims. I believe I said I thought I could get that approval, but that a dispute arose about what the terms of the settlement were, and so I didn't ask board approval.

But the record reflects otherwise. Facts are stubborn things. Our board minutes and resolutions indicate I did ask the board for approval after the January mediation and got it.

I just misremembered. Didn't want you to be surprised if this comes out in discovery.

EXHIBIT J

Jacob L. Newton

From: Jacob L. Newton
Sent: Monday, April 27, 2009 4:43 PM
To: 'david.genender@bakerbotts.com'
Cc: Peter D'Apice; Cliff I. Taylor; rbattaglia@obht.com
Subject: ASARCO Board Minutes and Board Resolutions
Attachments: ASACONF0110384_BOD approval of 750 million for asbestos.pdf

In the attached June 6, 2008 email, Jack Kinzie indicates that ASARCO's board minutes and board resolutions reflect that he sought approval of a \$750 million principal cash cap for asbestos and environmental claims. These board minutes and resolutions have not been produced to the Subsidiary Committee. The Subsidiary Committee's Request for Production No. 61 requests production of unedited minutes from all of ASARCO's board of directors meetings. Please produce the resolutions and minutes referenced in the attached email, as well as any and all other minutes and resolutions of ASARCO's board of directors that have not been produced to the Subsidiary Committee by ASARCO.

Jacob L. Newton
Stutzman, Bromberg, Esserman & Plifka,
A Professional Corporation
2323 Bryan Street, Suite 2200
Dallas, Texas 75201-2689
Telephone: (214) 969-4900
Facsimile: (214) 969-4999
Email: newton@sbep-law.com

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EXHIBIT K

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS

2323 BRYAN STREET

SUITE 2200

DALLAS, TEXAS 75201-2689

TELEPHONE: (214) 969-4900

FACSIMILE: (214) 969-4999

E-MAIL: newton@sbep-law.com

Jacob L. Newton

April 24, 2009

VIA EMAIL AND FIRST CLASS MAIL

David M. Genender
BAKER BOTTS LLP
2001 Ross Avenue
Dallas, Texas 75201-2980

Re: Derivative asbestos estimation proceeding, *In re ASARCO LLC, et al.*, Case No. 05-21207, in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division

Dear David:

As you know, the Subsidiary Committee and the FCR (collectively, "Plaintiffs") are prosecuting the derivative asbestos estimation proceeding on behalf of the CAPCO and LAQ bankruptcy estates, and therefore stand in the shoes of CAPCO and LAQ for all purposes in the derivative asbestos estimation proceeding. In light of the procedural posture of the derivative asbestos estimation, the Bankruptcy Court has previously granted the Plaintiffs access to all CAPCO and LAQ documents withheld by ASARCO on alleged privilege grounds (the "Subsidiary-Only Privileged Materials"), as well as all documents alleged to be protected by some type of joint privilege between ASARCO and CAPCO and LAQ (the "Joint Privileged Materials"). See Docket Nos. 4163, 4963, and 4997. Moreover, the Bankruptcy Court has also ruled that the vast majority of documents withheld under assertion of privileges belonging solely to ASARCO (the "ASARCO Privileged Materials") must likewise be produced to Plaintiffs for use in the derivative asbestos estimation. *Id.*

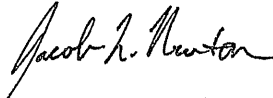
In reviewing the recent fee application filed by Porzio Bromberg & Newman, P.C. ("Porzio"), prior national asbestos counsel to ASARCO, CAPCO, and LAQ, Plaintiffs discovered numerous references to asbestos-related documents. The Porzio time entries include specific reference to CAPCO and LAQ documents (*i.e.*, Subsidiary-Only Privileged Materials), but also include numerous references to documents that are likely either Joint Privileged Materials or ASARCO Privileged Materials. To our knowledge, none of these documents have been produced or logged by ASARCO in the derivative asbestos estimation proceeding.

April 24, 2009

Page 2

We hereby formally request that ASARCO promptly facilitate production of all asbestos-related documents in the possession of ASARCO's agent, Porzio, including but not limited to all documents referenced in the attached Porzio time entries. Moreover, because Porzio is former asbestos counsel to CAPCO and LAQ, no claim of privilege can be asserted against CAPCO and LAQ, in whose shoes Plaintiffs stand for purposes of the current discovery requests. Accordingly, please produce all memoranda, correspondence, analyses, and all other types of documents that have been prepared by, received from, or sent to Porzio relating in any way to the asbestos liabilities of ASARCO, CAPCO, or LAQ.

Sincerely,

A handwritten signature in cursive script that reads "Jacob L. Newton".

Jacob L. Newton

CC: Ray Battaglia
Derek Baker
Trey Monsour
Sander Esserman
Peter D'Apice

EXHIBIT L

Jacob L. Newton

From: david.genender@bakerbotts.com
Sent: Tuesday, April 28, 2009 4:20 PM
To: Jacob L. Newton
Cc: RBattaglia@obht.com; DBaker@reedsmith.com; trey.monsour@haynesboone.com; Sander L. Esserman; Peter D'Apice
Subject: RE: Derivative Asbestos Estimation--Document Request--Porzio Bromberg & Newman
Follow Up Flag: Follow up
Flag Status: Red

Jake,

I have a call in to Kevin McCaffrey at Porzio to see what documents they may have. I was under the impression that Porzio's documents were at Sacaton. I'll let you know as soon as I hear back from Kevin.

DG

David M. Genender
Baker Botts L.L.P.
2001 Ross Ave., Suite 800
Dallas, Texas 75201
214.953.6936
214.661.4936 (fax)
214.263-4666 (cell)

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

From: Jacob L. Newton [mailto:newton@sbep-law.com]
Sent: Friday, April 24, 2009 1:05 PM
To: Genender, David
Cc: RBattaglia@obht.com; DBaker@reedsmith.com; trey.monsour@haynesboone.com; Esserman, Sander; Peter D'Apice
Subject: Derivative Asbestos Estimation--Document Request--Porzio Bromberg & Newman

David,

Please see the attached letter.

Sincerely,

Jacob L. Newton
Stutzman, Bromberg, Esserman & Plifka,
A Professional Corporation

2323 Bryan Street, Suite 2200
Dallas, Texas 75201-2689
Telephone: (214) 969-4900
Facsimile: (214) 969-4999
Email: newton@sbep-law.com

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re: § Case No. 05-21207
ASARCO LLC, *et al.* § Chapter 11
Debtors § (Jointly Administered)

**ORDER GRANTING OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF THE SUBSIDIARY DEBTORS' AND THE
FUTURE CLAIMS REPRESENTATIVE ROBERT C. PATE'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

CAME ON FOR CONSIDERATION the Official Committee of Unsecured Creditors of the Subsidiary Debtors' and Future Claims Representative Robert C. Pate's Motion to Compel Production of Documents and Supporting Memorandum of Law (the "Motion to Compel"), and the Court finding good cause exists to grant the Motion to Compel, it is hereby

ORDERED that the Motion to Compel is **GRANTED**; and it is further

ORDERED that ASARCO is to produce to the Subsidiary Committee and the FCR the Brownsville Evidence¹ (including any and all information relied upon by an ASARCO expert witness during the Brownsville Litigation), the MRI Evidence, the Board Minutes, and the Porzio Documents no later than 5:00 p.m. Prevailing Central Time on May _____, 2009.

SIGNED this ____ day of _____, 2009.

THE HONORABLE RICHARD SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion to Compel.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, et al.,	§	Chapter 11
	§	
Debtors.	§	(Jointly Administered)
	§	

OFFICIAL LIMITED SERVICE LIST EFFECTIVE APRIL 23, 2009

DEBTORS AND DEBTORS' COUNSEL		
ALC, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	American Smelting and Refining Company 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	AR Mexican Explorations Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
AR Sacaton, LLC (an Arizona Limited Liability Company) 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	AR Sacaton, LLC (a Delaware Limited Liability Company) 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	ASARCO Consulting, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
ASARCO Exploration Company, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	ASARCO LLC 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	ASARCO Master Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
ASARCO Oil and Gas Company, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Bridgeview Management Company, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	CAPCO Pipe Company, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
Cement Asbestos Products Company 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Covington Land Company 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Encycle, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
Government Gulch Mining Company, Limited 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Lac d'Amiante du Québec Ltée 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Lake Asbestos of Quebec, Ltd. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
LAQ Canada, Ltd. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Salero Ranch, Unit III, Community Association, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Southern Peru Holdings, LLC 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
Alta Mining and Development Company 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Blackhawk Mining and Development Company, Limited 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Green Hill Cleveland Mining Company 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
Peru Mining Exploration and Development Company 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Tulipan Company, Inc. 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711	Wyoming Mining and Milling Company 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711
Shelby A. Jordan Nathaniel Peter Holzer Jordan, Hyden, Womble, Culbreth & Holzer P.C. Suite 900, Bank of America 500 North Shoreline Blvd. Corpus Christi, Texas 78471 Fax: (361) 888-5555 Email: sjordan@jhwclaw.com pholzer@jhwclaw.com	Jack L. Kinzie James R. Prince Baker Botts L.L.P. 2001 Ross Avenue Dallas, Texas 75201 Fax: (214) 953-6503 Email: jack.kinzie@bakerbotts.com jim.prince@bakerbotts.com	Douglas E. McAllister Ruth Graham Kern ASARCO, LLC 5285 East Williams Circle, Suite 2000 Tucson, AZ 85711 Fax: (520) 798-7580 Email: dmcallister@asarco.com rkern@asarco.com

<p>Robert Davidson Dinsmoor Ray, Valdez, Mcchristian & Jeans, P.C. 5822 Cromo Drive El Paso, Texas 79912 Tel: 915-832-7200 Fax: 915-832-7333 Email: rdinsmoor@rvmjfirm.com</p>		
--	--	--

OFFICE OF THE UNITED STATES TRUSTEE		
<p>Barbara C. Jue Office of the United States Trustee Southern District of Texas Corpus Christi Office 606 North Carancahua St., Suite 1107 Corpus Christi, Texas 78476 Fax: (361) 888-3263</p>	<p>United States Trustee Southern District of Texas Corpus Christi Office Charles R. Sterbach Assistant U.S. Trustee 606 N. Carancahua Street, Suite 1107 Corpus Christi, TX 78476 Phone: 361-888-3261 Fax: 361-888-3263 Email: charles.r.sterbach@usdoj.gov</p>	<p>United States Department of Justice Office of the United States Trustee Richard W. Simmons, United States Trustee 515 Rusk, Suite 3516 Houston, TX 77002 Tel: (713) 718-4650, Ext. 241 Fax: (713) 718-4670</p>
EXAMINER		
<p>Michael D. Warner, Esq. Warner Stevens, L.L.P. 301 Commerce Street, Suite 1700 Fort Worth, TX 76102 Tel: (817) 810-5250 Fax: (817) 810-5255 Email: mwarner@warnerstevens.com</p>		
GOVERNMENTAL AUTHORITIES		
<p>Attorney General Office of the Attorney General 950 Pennsylvania Avenue N.W. Washington, D.C. 20530-0001 Tel: (202) 353-1555 Fax: (202) 514-0563</p>	<p>Attorney General State of Texas Office of the Attorney General 2820 S Padre Island Dr Corpus Christi, TX 78401 Fax: (361) 852-1190</p>	<p>Hal F. Morris Edith Stuart Phillips Ashley F. Bartram Assistant Attorneys General Office of the Texas Attorney General William C. Clements State Office Building Bankruptcy & Collection Division 300 West 15th Street, 8th Floor P.O. Box 12548 MC 008 Austin, Texas 78711-2548 Tel: 512/463-2173 Fax: 512/482-8341 Email: hal.morris@oag.state.tx.us ashley.bartram@oag.state.tx.us Attorneys for Texas Commission on Environmental Quality</p>
<p>David L. Dain Alan S. Tenenbaum Steve Keller U.S. Department of Justice Environmental and Natural Resources Division Environmental Enforcement Section 601 D Street, N.W. (20004) PO Box 7611, Ben Franklin Station Washington, D.C. 20044 Tel: (202) 514-3644 Fax: (202) 514-0097 Email: david.dain@usdoj.gov alan.tenenbaum@usdoj.gov</p>	<p>Internal Revenue Service P.O. Box 21126 Philadelphia, PA 19114</p>	<p>Internal Revenue Service Stop #5026AUS 300 E. 8th Street Austin, TX 78701</p>
<p>Comptroller of Public Accounts State Comptroller of Public Accounts Revenue Accounting Division - Bankruptcy Section P.O. Box 13528 Austin, TX 78711</p>	<p>United States Environmental Protection Agency Ariel Rios Building MC 2272A Room ARS 4232 1200 Pennsylvania Avenue, N.W. Washington, DC 20004 Tel: (202) 564-4276 Fax: (202) 501-0269</p>	<p>US EPA Region 2 290 Broadway New York, NY 10007 Fax: (212) 637-3526</p>
<p>US EPA Region 4 Sam Nunn Atlanta Federal Center 61 Forsyth Street, SW Atlanta, GA 30303-3104 Fax: (404) 562-8174</p>	<p>US EPA Region 5 77 W. Jackson Blvd. Chicago, IL 60604 Fax: (312) 353-4135</p>	<p>US EPA Region 6 1445 Ross Avenue Suite 1200 Dallas, Texas 75202 Fax: (214) 665-7113</p>

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