



ENTERED  
07/21/2009

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

<b>In re:</b>	§	<b>Case No. 05-21207</b>
	§	
<b>ASARCO LLC, et al.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtors.</b>	§	<b>(Jointly Administered)</b>
	§	

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**REPORT AND RECOMMENDATION ON JOINT MOTION TO WITHDRAW  
THE REFERENCE REGARDING CONFIRMATION AND INJUNCTION-  
RELATED ISSUES AND FOR REFERRAL OF THESE ISSUES TO THE  
BANKRUPTCY COURT FOR HEARING AND ISSUANCE OF PROPOSED  
FINDINGS AND CONCLUSIONS**

1. By Order dated July 2, 2009, the Bankruptcy Court approved a Joint Disclosure Statement with respect to three competing plans proffered by, respectively, the Debtors,<sup>1</sup> the Parent,<sup>2</sup> and Harbinger Capital Partners Master Fund I, Ltd. The Order also established procedures for issuing notices, soliciting votes, and preparing and tabulating ballots with respect to the three plans. The Bankruptcy Court has scheduled confirmation hearings to begin August 10, 2009, and to continue through August 19, 2009, if necessary. Notice of the scheduled confirmation hearing has been provided according to the July 2, 2009 Order.

2. A significant issue throughout this bankruptcy case has been the resolution of substantial asbestos-related liability asserted against the Debtors. Both the Debtors'

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<sup>1</sup> The Debtors include ASARCO LLC and the related debtor entities, which include Lac d'Amiante du Québec Ltée; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; Cement Asbestos Products Company; Encycle, Inc.; ASARCO Consulting, Inc.; ASARCO Master, Inc.; ASARCO Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations, Inc.; Government Gulch Mining Company, Limited; Covington Land Company; Southern Peru Holdings, LLC; AR Sacaton, LLC; ASARCO Exploration Company, Inc.; Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.

<sup>2</sup> For purposes of this Motion, "the Parent" refers collectively to ASARCO Incorporated and Americas Mining Corporation.

Plan and the Parent's Plan propose to transfer asbestos-related liability to an Asbestos Trust, which will be funded by Plan assets that will be used to resolve asbestos-related claims and demands. Both the Debtors' Plan and the Parent's Plan also provide for issuance of a permanent channeling injunction pursuant to 11 U.S.C. § 524(g) with respect to all asbestos-related claims. Both plans also require, among other things, that the District Court make or affirm various findings with respect to the requested injunction.

3. At a status conference before the Bankruptcy Court on July 7, 2009, counsel for Debtors, the Parent, the Asbestos Committee, the Future Claims Representative, and the ASARCO Committee suggested that the optimal procedure for adjudicating confirmation and related injunction requests would be for the District Court to withdraw the reference regarding these issues and refer them back to the Bankruptcy Court for evidentiary hearing and issuance of proposed findings of fact and conclusions of law.

4. Following the status conference, the Debtors, the Parent, the Asbestos Committee, the Future Claims Representative, and the ASARCO Committee (collectively, "the Moving Parties") jointly moved pursuant to 28 U.S.C. § 157(d) for withdrawal of the reference regarding confirmation proceedings and related requests for injunction. The Moving Parties further requested that the District Court refer the withdrawn issues back to the Bankruptcy Court to conduct the scheduled confirmation hearing and issue proposed findings of fact and conclusions of law. The Moving Parties further proposed that parties in interest should be allowed 10 days to object to the Bankruptcy Court's proposed findings of fact and conclusions of law, and that the

District Court should consider the proposed findings and conclusions and any objections thereto and issue the order adjudicating confirmation and the injunction request.

5. As is detailed below, the procedure requested by the Moving Parties complies with statutory requirements, avoids delay, and most efficiently resolves the issues presented by confirmation and related injunction requests. Accordingly, the Bankruptcy Court recommends that the Moving Parties' Motion be granted. In particular, the Bankruptcy Court recommends that the District Court (i) withdraw the reference with respect to confirmation and related injunction requests; (ii) refer these issues back to the Bankruptcy Court for evidentiary hearing and issuance of proposed findings of fact and conclusions of law; (iii) order that any objections to the Bankruptcy Court's findings and conclusions be filed within 10 days of entry; and (iv) after considering the Bankruptcy Court's proposed findings and conclusions and any objections, enter the confirmation order and the requested injunction.

6. The recommended procedure—withdrawal of the reference and referral back for an evidentiary hearing and issuance of proposed findings and conclusions—accords with the requirements of the Bankruptcy Code. In particular, where a plan involves issuance of an injunction under section 524(g), the statutory scheme contemplates that the district court will enter the confirmation order and issue the injunction. Section 524(g)(1)(A) provides that, “[a]fter notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge.” Thus, the Code authorizes the court that enters a confirmation order to issue the section 524(g) injunction.

7. Section 524(g)(3)(A) provides that if statutory requirements are met and “the order confirming the plan of reorganization was issued or affirmed by the district court,” then “after the time for appeal of the order that issues or affirms the plan . . . the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal.” Thus, enforceability of the injunction is premised on district court action. Further, under section 524(g)(2)(A), after entry of the injunction, “any proceeding that involves the validity, application, construction, or modification of such injunction . . . may be commenced only in the district court in which such injunction was entered.” The plain language of this provision presumes that a 524(g) injunction will be entered by a district court.

8. Withdrawing the reference with respect to confirmation and injunction-related issues would appropriately vest responsibility for entering any confirmation order and injunction in the District Court and avoid statutory construction questions regarding the meaning of the phrase “or affirmed” in Section 524(g)(3)(A). At the same time, referring confirmation and injunction-related issues back to the Bankruptcy Court to conduct an evidentiary hearing and make findings of fact and conclusions of law recognizes the Bankruptcy Court’s expertise, its familiarity with the parties, and its experience in hearing and adjudicating numerous issues in the course of the multi-year ASARCO bankruptcy. The combination of withdrawal and referral thus provides for an efficient process that conserves judicial resources and follows statutory directive.

9. In addition, the recommended procedure accords with requirements of both the Debtors’ Plan and the Parent’s Plan. These plans condition effectiveness on, among other things, a finding made or affirmed by the District Court that the plan

complies with section 524(g). In addition, the Debtors explain that the Debtors' Plan depends on funding from a sale of assets to Sterlite and that the Sterlite purchase and sale agreement, in turn, imposes various approaching deadlines by which the necessary court findings must be made.<sup>3</sup> The recommended procedure avoids unnecessary delay that might result if a confirmation order were issued by the Bankruptcy Court and appealed to the District Court, but at the same time allows a reasonable time for parties to object to the Bankruptcy Court's proposed findings and conclusions and be heard if necessary on any such objections. The Bankruptcy Court recommends that, as in Bankruptcy Rule 9033, any objections to the proposed findings and conclusions be filed within 10 days of entry.

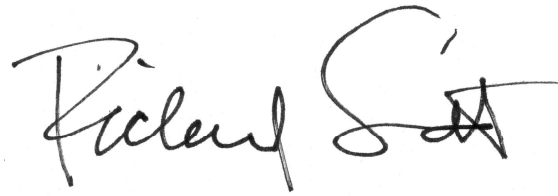
10. There is precedent for the recommended procedure. A similar procedure was used, for example, in *In re Asbestos Claims Management Corp.*, Case No. 02-37124-SAF-11 in the Northern District of Texas. See Report to District Court on Motion to Withdraw Reference entered October 7, 2002.

11. A proposed order will be provided to the District Court upon entry of the Report and Recommendation.

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<sup>3</sup> Sterlite can terminate the agreement if a Confirmation Order is not entered by August 31, 2009 (a deadline that may be extended to September 30, 2009 under certain circumstances). In addition, Sterlite has a termination right if the closing of the transaction does not occur on or before November 30, 2009 (a deadline that may be extended to December 31, 2009 under certain circumstances). A condition of closing is that (i) the Confirmation Order has become an Effective Order, which is defined to mean that the time to appeal has expired or, if an appeal has been filed, no stay of the Confirmation Order has been issued; and (ii) the District Court shall have issued or affirmed the Confirmation Order in accordance with Section 524(g)(3)(A). See Sterlite PSA at Art XI and Art. XIII.

DATED: 07/21/2009

A handwritten signature in black ink, appearing to read "Richard S. Schmidt". The signature is written in a cursive style with a large initial "R" and "S".

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RICHARD S. SCHMIDT  
United States Bankruptcy Judge

**AGREED AS TO FORM AND SUBSTANCE:**

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