

ANALYSIS OF DIP FINANCING AGREEMENT

Note – The Subsidiary Committee and the FCR reserve all rights to raise additional objections to the Financing Agreement and the Financing Order upon review of the final documents.

<u>SECTION</u>	<u>PROBLEM</u>	<u>SOLUTION</u>
1.1 “Accounts”	<p>Definition of “Accounts” is overly broad; includes, <i>inter alia</i>, (g) “insurance policies or rights relating to any of the foregoing” and (j) “all Proceeds of any of the foregoing.”</p> <p>Notwithstanding the Carve Out and our proposed language, this definition needs to be limited because of certain other provisions of the DIP Agreement, including Section 3.2.</p>	<p>The definition should be limited so as to exclude (i) the KWELM insurance proceeds currently held in an escrow account at Wells Fargo Bank, National Association, pursuant to that certain Escrow Agreement dated July 8, 2005, among Asarco, LLC, Capco Pipe Company, Inc., Lac d’Amiante du Québec, Ltd., and the Official Committee of Unsecured Creditors of Lac d’Amiante du Québec, Ltd. and Capco Pipe Company, Inc., et al.; (ii) any other insurance payment or insurance proceeds arising from, payable as a result of, or otherwise relating to personal injury claims; and (iii) any other payments or assets or the proceeds of such assets arising from, payable as a result of, or otherwise relating to personal injury claims.</p>
1.1 “Avoidance Claim”	<p>Includes all claims asserted by or on behalf of Asarco under 11 U.S.C. §§ 544, 546, 547, 548, 549, or 553.</p> <p>Notwithstanding the Carve Out and our proposed language, this definition needs to be limited because Avoidance Claim is included in the definition of Other Collateral, and Other Collateral is a component of Collateral.</p>	<p>The definition should be limited so as to exclude any claims or causes of action that have been or may be asserted by the Subsidiary Debtors’ Committee and/or the FCR, either in the pending Adversary Proceeding (Case No. 05-2048) or in any other proceeding.</p>
1.1 “Carve-Out”	<p>The term “Carve-Out is defined in Paragraph 37 of the Financing Order, rather than in the Financing Agreement.</p> <p>As defined, the Carve-Out and its accompanying definition of Estate Professionals does not protect the fees and expenses of the Subsidiary Committee, the FCR, or the Professional Persons employed by the Subsidiary Committee and/or the FCR.</p>	<p>Paragraph 37 of the Financing Order should be amended to read as follows:</p> <p>Except (i) for the Carve-Out (as defined below) and (ii) as otherwise provided in the Financing Agreement or this Financing Order, no priority claims shall be allowed that are or will be prior to or on a parity with the Superpriority Claims or the DIP Liens of the DIP Agent and the DIP Lenders against the Debtor and its estate arising out of the DIP Financing Documents in respect of the DIP Facility or this Order. Upon a DIP Event of Default (as defined herein), the DIP Agent’s DIP Liens and Superpriority Claims shall be subject to</p>

		<p>a carve-out in the maximum aggregate amount of \$_____ (the “Carve-Out”) for (a) fees owed by the Debtor pursuant to 28 U.S.C. § 1930 and any fees payable by the Debtor to the Clerk of the Bankruptcy Court, (b) out-of-pocket expenses of the members of the Committee, (c) out-of-pocket expenses of the members of the Official Committee of Unsecured Creditors in the Subsidiary Debtors’ respective bankruptcy cases¹ (the “Subsidiary Committee”), (d) fees and out-of-pocket expenses of Robert C. Pate, future claims representative (“FCR”), and (e) the fees, costs, and expenses of the Debtor’s, the Committee’s, the Subsidiary Committee’s, and the FCR’s court-approved professional persons (the “Estate Professionals”), provided so long as no DIP Event of Default exists the Debtor can pay the Estate Professionals, and such payments will not count against the amount of the Carve-Out nor will the fees of such professionals incurred during the month prior to the date on which the default occurred count against such amount. All fees, costs, and expenses of the Estate Professionals payable from the Carve-Out shall be subject to Court approval following a hearing on at least twenty (20) days’ notice to the DIP Agent, the U.S. Trustee, and other parties in interest entitled to notice, unless an interim fee procedure shall be approved by the Court, in which case said procedure shall govern timing of and holdback terms related to such payments. So long as no DIP Event of Default shall have occurred, the Debtor shall be allowed to pay administrative expenses under Bankruptcy Code §§ 330 and 331 as the same may be due and payable, and such payments shall not be applied against the Carve-Out. Notwithstanding anything to the contrary in any provision of this Order, the interim payments of fees and expenses that have been made to the Estate Professionals prior to a DIP Event of Default shall not be subject to disgorgement on account of the superpriority claim and the secured claim of the DIP Agent.</p>
1.1 “Collateral”	<p>The definition of Collateral includes “Accounts” and, through Other Collateral, also includes “Avoidance Claims.” These two problems can be</p>	<p>The definition of Collateral needs to be supplemented by (a) making the proposed changes to the definition of Accounts (see above); (b) making the proposed changes to the definition of “Avoidance Claims” (see above); and (c) by</p>

¹ The Subsidiary Debtors shall include the following five entities:

- a. Lac d’Amiante du Québec Ltée (“LAQ”);
- b. Capco Pipe Company, Inc. (“Capco”);
- c. Cement Asbestos Products Company;
- d. Lake Asbestos of Quebec, Ltd.; and
- e. LAQ Canada, Ltd.

	<p>corrected through the proposed solution above.</p> <p>In addition, the definition of Collateral excludes “Excluded Collateral.” Excluded Collateral is too limited, and needs to be broadened so as to be consistent with our proposed language.</p>	<p>changing the definition of “Excluded Collateral” to read as follows:</p> <p><u>Excluded Collateral</u> shall mean (a) the KWELM insurance proceeds currently held in an escrow account at Wells Fargo Bank, National Association, pursuant to that certain Escrow Agreement dated July 8, 2005, among Asarco, LLC, Capco Pipe Company, Inc., Lac d’Amiante du Québec, Ltd., and the Official Committee of Unsecured Creditors of Lac d’Amiante du Québec, Ltd. and Capco Pipe Company, Inc., et al.; (b) any other insurance payment or insurance Proceeds arising from, payable as a result of, or otherwise relating to personal injury claims; (c) any other payments or assets or the Proceeds of such assets arising from, payable as a result of, or otherwise relating to personal injury claims; (d) any claims or causes of action that have been or may be asserted by the Subsidiary Debtors’ Committee and/or the FCR, either in the pending Adversary Proceeding (Case No. 05-2048) or in any other proceeding; and (e) notes receivable of the Company received in connection with sales of business divisions which notes receivable have been issued to the Company for the sole purpose of paying costs for environmental remediation or asbestos claims associated with the business division sold and Proceeds thereof.</p>
<p>1.1 “Excluded Collateral”</p>	<p>The definition of Collateral excludes certain “Excluded Collateral.” Excluded Collateral, however, is too limited and needs to be broadened so as to be consistent with our proposed language.</p>	<p>The definition of “Excluded Collateral” should be amended to read as follows:</p> <p><u>Excluded Collateral</u> shall mean (a) the KWELM insurance proceeds currently held in an escrow account at Wells Fargo Bank, National Association, pursuant to that certain Escrow Agreement dated July 8, 2005, among Asarco, LLC, Capco Pipe Company, Inc., Lac d’Amiante du Québec, Ltd., and the Official Committee of Unsecured Creditors of Lac d’Amiante du Québec, Ltd. and Capco Pipe Company, Inc., et al.; (b) any other insurance payment or insurance Proceeds arising from, payable as a result of, or otherwise relating to personal injury claims; (c) any other payments or assets or the Proceeds of such assets arising from, payable as a result of, or otherwise relating to personal injury claims; (d) any claims or causes of action that have been or may be asserted by the Subsidiary Debtors’ Committee and/or the FCR, either in the pending Adversary Proceeding (Case No. 05-2048) or in any other proceeding; and (e) notes receivable of the Company received in connection with sales of business divisions which notes receivable have been issued to the Company for the sole purpose</p>

		of paying costs for environmental remediation or asbestos claims associated with the business division sold and Proceeds thereof.
1.1 “Other Collateral”	The definition of Other Collateral includes Avoidance Claims. This is a problem because Other Collateral is a component of Collateral, and the Agent and Lenders may attempt to assert a security interest in the fraudulent transfer and other claims currently being asserted by the Subsidiary Committee and the FCR in adversary proceeding 05-2048.	The problem with the definition of Other Collateral can be corrected by making the proposed change (see above) to the definition of Avoidance Claims, which will result in the exclusion of any claims or causes of action that have been or may be asserted by the Subsidiary Committee and/or the FCR, either in the pending Adversary Proceeding (Case No. 05-2048) or in any other proceeding.
1.1 “Professional Person”	The definition fails to include the FCR, and the definition also should be expanded to expressly include the Subsidiary Committee	The definition of “Professional Person” should be amended to read as follows: Professional Person shall mean a Person who is an attorney, accountant, appraiser, auctioneer or other professional person and who is retained, with Court approval, by (i) the Company, the Subsidiary Debtors, or any other of the Company’s subsidiaries pursuant to Section 327 of the Bankruptcy Code; (j) a creditors’ committee pursuant to Section 1103(a) of the Bankruptcy Code, including the Subsidiary Debtors’ Committee; or (k) the FCR.
2.1(m) – page 22	It is a condition precedent to the Financing Agreement that “there shall be no ... suit, action, investigation or proceeding (judicial or otherwise) pending against [Asarco] or any of its assets, which ... could reasonably be expected to have a Material Adverse Effect.”	Subsection (y) of Section 2.1(m) should be amended to read as follows: or (y) except for the claims or causes of action that have been or may be asserted against Asarco in adversary proceeding 05-2048 or in any other proceeding asserting the claims or causes of action set forth in the Amended Complaint attached as Exhibit A to the FCR’s Motion to Realign Parties, to Grant Authority to Prosecute Avoidance and Other Actions on Behalf of the Subsidiary Debtors’ Estates, and to Deem as Filed the Amended Complaint Adding Parties and Claims, or Alternatively to File a Separate Action, and subject thereto Answer and Counterclaims to Complaint of Asarco, LLC for Declaratory Relief [docket no. 10 in Adversary Proceeding 05-2048], suit, action, investigation or proceeding (judicial or administrative) pending against the Company or any of its assets, which, in the opinion of the Agent, if adversely determined, could reasonably be expected to have a Material Adverse Effect.
3.2(a) – page 25	All payments on Accounts shall	The problem is fixed by making the changes

	<p>be placed in a lockbox controlled by the Agent.</p> <p>Additionally, all Proceeds of the sale of Collateral will be held in trust for the Agent until Asarco places such proceeds into an account controlled by the Agent.</p> <p>However, as indicated earlier, Accounts includes insurance and insurance proceeds, while Collateral is also overly broad and currently includes the claims asserted in adversary proceeding 05-2048.</p>	<p>suggested to the definition of “Accounts,” “Collateral,” and “Excluded Collateral.”</p>
<p>3.5(a) 3.5(g) 3.5(h)</p>	<p>These provisions are additional examples of provisions that, due to the overly broad definition of Collateral, might adversely affect the claims asserted in adversary proceeding 05-2048.</p>	<p>The solution is the same as identified for Section 3.2(a).</p>
<p>3.7(d) – page 28</p>	<p>We do not have the “borrowing base certificate” to determine what additional representations Asarco may be required to make.</p>	<p>The problem is fixed by adding the following introductory phrase:</p> <p>(d) To the extent not inconsistent with this Financing Agreement,</p>
<p>4.3 – page 30</p>	<p>The Agent and the Lenders require Asarco to indemnify them against their own ordinary negligence.</p>	
<p>5.1 – page 32</p>	<p>Gives the Agent a lien and security interest on all Collateral.</p>	<p>The proposed changes to the definition of Collateral must made, particularly the changes to the definition of Excluded Collateral.</p> <p>Additionally, the following language should be added to the end of Section 5.1(a):</p> <p>Provided, however, that the lien or liens granted to Lenders in this DIP Financing Agreement shall not attach to or otherwise encumber (i) the KWELM insurance proceeds currently held in an escrow account at Wells Fargo Bank, National Association, pursuant to that certain Escrow Agreement dated July 8, 2005, among Asarco, LLC, Capco Pipe Company, Inc., Lac d’Amiante du Québec, Ltd., and the Official Committee of Unsecured Creditors of Lac d’Amiante du Québec, Ltd. and Capco Pipe Company, Inc., et al.; (ii) any other insurance payment or insurance</p>

		Proceeds arising from, payable as a result of, or otherwise relating to personal injury claims; (iii) any other payments or assets or the Proceeds of such assets arising from, payable as a result of, or otherwise relating to personal injury claims; and (iv) any claims or causes of action that have been or may be asserted by the Subsidiary Debtors' Committee and/or the FCR, either in the pending Adversary Proceeding (Case No. 05-2048) or in any other proceeding; and it is further provided that the lien or liens granted to Lenders under this Financing Agreement shall not have priority over or otherwise be superior to (i) the professional fees and expenses of the Subsidiary Debtors' Committee's and the FCR's court-appointed Professional Persons and (ii) the fees and expenses incurred by the Subsidiary Debtors' Committee and the FCR.
5.3(a) – page 33	Gives the Agent a first priority lien in all Collateral.	The problem is fixed if the suggested changes to Section 5.1 are made (see above).
5.4(e) – page 33	Asarco represents and warrants that no Inventory has been produced in violation of the Fair Labor Standards Act.	
5.8 – page 35	Two problems: First, the claims asserted by the Subsidiary Committee and the FCR in adversary proceeding 05-2048 might constitute “commercial tort claims.” Second, this section purports to grant to the Agent a security interest in any commercial tort claim (as well as the Proceeds thereof) that Asarco might hold or at any time acquire.	The first problem is fixed by adding the following introductory phrase: Except for the claims or causes of action that have been or may be asserted by or on behalf of Asarco in adversary proceeding 05-2048, or in any other proceeding asserting the claims or causes of action set forth in the Amended Complaint attached as Exhibit A to the FCR's Motion to Realign Parties, to Grant Authority to Prosecute Avoidance and Other Actions on Behalf of the Subsidiary Debtors' Estates, and to Deem as Filed the Amended Complaint Adding Parties and Claims, or Alternatively to File a Separate Action, and subject thereto Answer and Counterclaims to Complaint of Asarco, LLC for Declaratory Relief [docket no. 10 in Adversary Proceeding 05-2048], As for the second problem, the security interest granted in favor of the Agent should be stricken from Section 5.8.
6.1(h)	Asarco represents and warrants that no subsidiary owns any material property or asset.	6.1(h) should be stricken from the Financing Agreement.
6.2(b) – page 39	Another example where the first priority security interests	The problem is again fixed if the changes to the definition of Collateral, particularly the changes

	in the Collateral are referenced.	to Excluded Collateral, are incorporated.
6.2(n) – page 47	Professional Fees should be kept current.	The following provision should be added to the end of Section 6.2(n): “, including but not limited to all Professional Fees.”
6.4(a) – page 48	Another example where the term “Collateral” is used.	The problem is again fixed if the changes to the definition of Collateral, particularly the changes to Excluded Collateral, are incorporated.
6.4(n) – page 50	Precludes Asarco from making any loan, advance, or transfer to any subsidiary other than certain budgeted expenditures.	Section 6.4(n) should be amended to read as follows: <u>Advances and Transfers to Subsidiaries.</u> Notwithstanding anything in this Agreement to the contrary, and except with respect to payment of Professional Fees, make any loans, advances or transfers to any subsidiary of the Company other than advances by the Company to any subsidiary to pay expenditures permitted by the Budget or otherwise approved by the Agent in writing.