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Asarco Brings CERCLA Suit Against Rockefeller Estate

By Martin Bricketto

Law360, New York (April 19, 2011) -- Asarco LLC hit the estate of John D. Rockefeller Sr. and other entities with a lawsuit in Washington state Monday seeking environmental response costs at a polluted smelter site over which the plaintiff recently paid a \$38 million settlement.

Asarco claims in its contribution and cost recovery complaint filed in the Western District of Washington that the estate and four other entities are liable as owners or operators under the Comprehensive Environmental Response Compensation and Liability Act for contamination at the Everett Smelter site in Everett, Wash.

During its Chapter 11 bankruptcy proceeding in a Texas federal court, Asarco agreed to pay \$38 million to Washington state and the Port of Everett to resolve its own CERCLA liabilities over the site, and the company paid that amount in full following court approval of its reorganization plan in 2009, according to the complaint. Asarco alleges the settlement amount included costs to clean up and control contamination associated with the defendants' historic activities at the site.

"Because each defendant qualifies as a responsible party under CERCLA ... each defendant is liable for its equitable share of any overpayment incurred by Asarco," the company said in the complaint. Other named defendants are American Steel Barge Co., Puget Sound Energy Inc., Everett Improvement Co. and Everett Land Co.

Asarco contends the Rockefeller estate and the other defendants, along with their predecessor and successor entities, owned or operated manufacturing, storage, transport and related operations via facilities in or near the site, which includes 687 acres whose boundaries are defined by the alleged aerial deposition of metal containing particles emitted from the stack of the former smelter.

Constructed in 1894, John D. Rockefeller owned and operated the smelter through the Puget Sound Reduction Co. for the purpose of smelting gold, silver and lead, and an arsenic extraction operation was added in 1898, the complaint alleges.

Asarco predecessor companies acquired the smelter in 1905 and operated it until 1912, according to the complaint.

The company demolished the smelter sometime between 1912 and 1915 and the property was sold in various parcels, according to information on the Washington Department of Ecology's website, which said the area was contaminated with lead, arsenic and other metals.

The department also said the smelter property itself was developed into residential properties in the 1930s and 1940s.

Pursuant to a plan finalized in 1999, remediation efforts at the site are ongoing, and the department estimated in October that more than 100 properties had been cleaned up, with the most highly contaminated soils removed or covered.

A Rockefeller family spokesman could not immediately be reached for comment Tuesday.

Integer Law Corp. and Marten Law PLLC represent Asarco.

Counsel information for the defendants was not immediately available.

The case is Asarco LLC v. Estate of John D. Rockefeller Sr. et al., number 2:11-cv-00661, in the U.S. District Court for the Western District of Washington.

--Editing by Eydie Cubarrubia.

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