

Asarco Agrees To Settlement In \$18M Mine Cleanup Row

By Sean McLernon

Law360, New York (December 06, 2012) -- Asarco LLC has reached an undisclosed settlement with Hecla Mining Co. resolving a \$17.7 million Comprehensive Environmental Response, Compensation and Liability Act suit over cleanup costs at a silver and lead mining site in Montana, according to court documents filed Thursday.

The two companies reached a confidential agreement addressing Asarco's claims in the suit, which asserts that Hecla, as the owner and operator of the Black Pine Mine Superfund site in central Montana between 1922 and 1931, shares responsibility for part of its cleanup expenses because of its historic mining activities.

Asarco, which is now owned by Grupo Mexico SAB, has already paid for all of its cleanup responsibilities under CERCLA when it shelled out the \$17.7 million three years ago, according to the suit.

"This amount represents more than Asarco's allocable share of costs related to its releases or disposal of hazardous substances in or near the Black Pine site," the complaint said. "Because [Hecla] qualifies as a responsible party under CERCLA, [Hecla] is liable for its equitable share of any overpayment incurred by Asarco."

The payments were negotiated as part of Asarco's reorganization under bankruptcy, which it entered in 2005. Both the U.S. and Montana filed proofs of claims in the bankruptcy case asserting that Asarco was responsible for contamination at the Black Pine site, which includes mill tailings and a large mine waste rock dump.

The company proposed the settlements for the CERCLA claims in March 2009 paying \$17.5 million to the Montana Custodial Trust and another \$190,000 to the U.S. Forest Service. Asarco's plan of reorganization was approved by the bankruptcy court in November 2009.

Asarco attorney Gregory Evans of Integer Law Corp. said both sides were able to work well together in order to settle the case.

"It was an example of how two companies can come together on a business-to-business level and avoid all of the nonsense and unnecessary posturing that goes on all too frequently in litigation," Evans said.

Counsel for Hecla were not immediately available for comment Thursday.

In addition to the action filed against Hecla, Asarco lodged several suits in June seeking to recoup cleanup costs, including claims against Union Pacific Co. looking to recover some of the \$359 million it has spent on cleanup expenses at the Coeur d'Alene site in Idaho.

Asarco claims that Union Pacific, the operator of railway lines on the site, built its railbeds using mining wastes containing hazardous materials that then leached into the soil and groundwater. The mining company also claims that, through years of operating open rail cars through the site, Union Pacific is responsible for the release of dust containing lead and other hazardous substances into waterways through the site. The case is still pending.

Asarco is represented by Gregory Evans and James D. Warren of Integer Law Corp. and Kenneth K. Lay of Crowley Fleck PLLP.

Hecla is represented by Linnea Brown and Jacob Licht of Temkin Wielga & Hardt LLP and Gary M. Zadick of Ugrin Alexander Zadick & Higgins PC.

The case is Asarco v. Hecla Mining Co., case number 6:12-cv-00052, in the U.S. District Court for the District of Montana.

--Additional reporting by Dan Packel. Editing by Lindsay Naylor