

COEUR D'ALENE PRESS

Asarco Lawsuit Gets a Boost

Federal appeals court allows suit against railroad

August 28, 2014

DAVID COLE

COEUR d'ALENE - The mining company Asarco has won an appeal in a U.S. District Court ruling that dismissed its lawsuit against Union Pacific railroad. Asarco, based in Tucson, Ariz., filed a lawsuit against Union Pacific over mine waste pollution in the Coeur d'Alene River Basin, seeking to recoup from the railroad a share of the \$482 million Asarco paid for cleanup. "We look forward to proving our case against Union Pacific at trial," said Gregory Evans, a Los Angeles-based attorney who represented Asarco on appeal.

The 9th U.S. Circuit Court of Appeals' decision was published Wednesday. "We are disappointed with the court's decision," said Aaron Hunt, a spokesman for Union Pacific. "We will continue to defend ourselves vigorously in court against Asarco's allegations." Asarco is a mining, smelting and refining company which operated more than 20 mines in the Coeur d'Alene Basin, participating in nearly a century of operations there.

Asarco claims Union Pacific caused widespread heavy metals contamination. Union Pacific used a settlement agreement between the two companies to persuade the U.S. District Court in Coeur d'Alene that Asarco's claims were already resolved, Evans said. The federal appeals court disagreed with the lower court. "Although we agree with the district court that Asarco's (First Amended Complaint) was timely, we conclude that the district court erred by dismissing Asarco's contribution claim on the basis of an ambiguous settlement agreement," U.S. District Judge Cormac Carney wrote for the three-judge appeals court panel. Carney is sitting on the panel by designation.

"The fact is, Union Pacific abandoned miles of contaminated railway that is today causing harm to human health and the environment in the Coeur d'Alene (Basin)," Evans said. "While Union Pacific would love to avoid a public airing of its environmental damages based on a technicality, thankfully that will not happen in this case." Evans will represent Asarco at trial. "Union Pacific will be held to account for its share of cleanup costs and, in the process, its environmentally harmful railroad abandonment, transportation, dumping and spilling practices will be on display for all to see," Evans said. Union Pacific built rail lines and transported ore and other materials for the region's mining and smelting facilities, according to the appeals court.