

Callahan Can't Dodge Mine Cleanup Dispute

By Juan Carlos Rodriguez

Law360, New York (November 29, 2012) -- A federal judge on Tuesday shot down Callahan Mining Corp.'s request to dismiss a lawsuit by Asarco LLC alleging Callahan owes it money for the cleanup of a Washington state mine, saying Asarco has made adequate pleadings thus far.

U.S. District Judge Lonny R. Suko rejected Callahan's argument that Asarco had not sufficiently showed that Callahan owed it a contribution to a \$3.5 million cleanup Asarco paid under a Comprehensive Environmental Response, Compensation, and Liability Act settlement with the state of Washington at the Van Stone Mine site.

"Plaintiff has plausibly alleged facts which suggest but do not prove that the defendant Callahan may have legal liability herein. However, without basic discovery, plaintiff cannot reasonably be expected to go further at this time," the judge said.

He said Asarco is not required at this stage in the litigation to state with any extra specificity the nature and extent, if any, Callahan may have contributed to the disposition of hazardous substances during the period covered by the settlement.

"The allegations indicate Asarco has a right to relief, and Asarco's allegations rise above the level of mere speculation. Even if this court believes actual proof of the facts alleged is improbable, or that recovery is remote or unlikely, a pleading should still survive dismissal," Judge Suko said in his order denying Callahan's motion to dismiss the case.

The dispute arose out of Asarco's 2005 Chapter 11 bankruptcy filing. In 2009 its reorganization plan was approved, part of which was a payment of \$3.5 million to the Washington state's Department of Ecology to resolve its environmental liabilities at the site.

Asarco, after paying the settlement filed a complaint in June alleging that its settlement included costs to clean up and control contamination allegedly associated with Callahan's, Hecla Ltd.'s and Washington Resources LLC's historic lead and zinc mining activities at the site.

Callahan argued that Asarco's settlement only resolved Asarco's own liability at the site and CERCLA does not provide for contribution for payments that are not more than a party's fair share. Callahan asserts that Asarco did not pay more than its fair share in the settlement.

"Callahan argues that the settlement agreement does not state that Asarco is paying 'costs to clean up and control contamination associated with defendants' historic activities' as alleged by Asarco," Judge Suko said.

The judge said Callahan argued that Asarco is paying a reduced amount to settle its own liability, and that because Asarco has clearly neither funded the full site cleanup nor even paid its own entire liability for the site, permitting Asarco's lawsuit puts Callahan at risk of making a contribution payment to Asarco and still being potentially liable to Washington in a subsequent cost recovery action.

"The court finds the current state of the record is insufficient to determine whether the bankruptcy court settlement resolved only Asarco's liability or whether it actually resulted in overpayment to which Asarco is entitled to seek contribution from others," the judge said.

He said although Callahan was never pursued as a potentially liable party, that it is insufficient to suggest that Callahan is immune from a contribution suit.

Callahan is represented by Raymond B. Ludwiszewski and Tammy M. Stafford of Gibson Dunn & Crutcher LLP and James M. Danielson of Jeffers Danielson Sonn & Aylward PS.

Asarco is represented by Gregory Evans, William R. Pletcher and James G. Warren of Integer Law Corp. and Steven Gary Jones and Linda Rae Larson of Marten Law Group PLLC.

The case is Asarco LLC v. Hecla Mining Co. et al., number 2:12-cv-00381 in the U.S. District Court for the Eastern District of Washington.