

Asarco Keeps DuPont, Others In \$150M Mine Cleanup Suit

By Eric Hornbeck

Law360, New York (January 11, 2013)--DuPont Co., U.S. Steel Corp., NL Industries Inc. and Sunoco Inc. can't yet escape Asarco LLC's efforts to make them help pay a \$150 million environmental cleanup bill it landed after a bankruptcy reorganization because too many factual questions remain, a Missouri federal judge ruled Thursday.

U.S. District Judge Beth Phillips said that there were too many disagreements between Grupo Mexico SAB de CV affiliate Asarco and the other companies, including whether certain claims were withdrawn during Asarco's bankruptcy and the extent of the environmental damage that is subject to cleanup and consent decrees. "A careful review of the submitted briefs, exhibits, and proposed supplementary materials reveals numerous issues that the parties vigorously dispute," the judge said.

Judge Phillips said she'll consider whether to stay the suit pending a further U.S. Environmental Protection Agency review at an upcoming hearing. Asarco attorney Gregory L. Evans of the Integer Law Corp. told Law360 on Friday that the company was pleased with the judge's decision. "It's unfortunate that DuPont, U.S. Steel, Sunoco and NL Industries all teamed up to waste two years and limited court resources on these meritless motions for summary judgment," Evans said. Attorneys for the defendants didn't immediately respond to requests for comment Friday.

Asarco filed for Chapter 11 bankruptcy in 2005. The federal government and three states filed a \$4.8 billion claim for environmental damage in the Tri-States Mining District, a 2,500-square-mile area

in Missouri, Kansas and Oklahoma that saw extensive lead and zinc mining for more than a century, finally ending in the 1940s, according to the judge's decision.

Eventually, Asarco settled with the government for \$158 million, and the bankruptcy court approved the settlement in 2008. In 2011, Asarco brought its suit against 11 companies under the Comprehensive Environmental Response, Compensation and Liability Act, saying that they should pay some of the bill because they were also involved in mining activities in the area. The U.S. Environmental Protection Agency has found that the mining sites are contaminated with metals, hazardous waste rock and acid mine drainage.

Of the 11 defendants originally named in the suit, only NL, DuPont, U.S. Steel, Sunoco, and Doe Run Resources Corp. remain. Other defendants originally named that have since settled include Freeport-McMoran Copper & Gold Inc. and several of its predecessors, Berkshire Hathaway Inc.-owned BNSF Railway Co., Halliburton Co. and KBR Inc.

Asarco is represented by Gregory L. Evans and James G. Warren of the Integer Law Corp., and W. James Foland and Michael L. Belancio of Foland Wickens Eisfelder Roper & Hofer PC. DuPont and U.S. Steel are represented by Michael D. Hockley and Andrew C. Brought of Spencer Fane Britt & Browne LLP. Sunoco is represented by Daniel L. McClain of Scharnhorst Ast & Kennard PC and Robert P. Frank, Michael C. Falk and David W. Wagner of Reed Smith LLP. NL Industries is represented by W.C. Blanton and Jane Fedder of Husch Blackwell LLP and Daniel L. McClain. The case is *Asarco LLC v. NL Industries Inc. et al.*, case number 3:11-cv-00138, in the U.S. District Court for the Western District of Missouri.

--Editing by Jeremy Barker.