



---

Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | [www.law360.com](http://www.law360.com)  
Phone + 1 646 783 7100 | Fax: + 1 646 783 7161 | [customerservice@portfoliomediamedia.com](mailto:customerservice@portfoliomediamedia.com)

---

## Asarco Inc. Challenges \$1.1B Enviro Settlement

By Ben James

Law360, New York (June 26, 2009) -- Asarco LLC parent Asarco Inc. is challenging a settlement agreement under which Asarco LLC would resolve about \$3.6 billion in environmental claims for about \$835 million in unsecured claims and \$275 million in cash, arguing that the debtor is being put on the hook for contamination it did not cause.

Asarco Inc. filed its statement of issues on appeal on Thursday in the U.S. Bankruptcy Court for the Southern District of Texas. On June 15, the parent filed notice that it was appealing Judge Richard Schmidt's June 5 order granting the Asarco LLC's bid for approval of the settlement.

"With great respect for the bankruptcy court, we feel that the court fundamentally misunderstood and misapplied the federal legal standard that applies when the settlement of a federal environmental case is submitted to a court for approval," Gregory Evans, a partner with Milbank Tweed Hadley & McCloy LLP who represents Asarco Inc. in its appeal, told Law360 on Friday. There was an \$187.5 million claim for lead contamination at a site in Omaha, Neb., and multiple studies showed that the contamination underlying the claim stemmed from peeling lead paint on homes, not Asarco, Evans pointed out.

But the bankruptcy court never considered that evidence because it applied the wrong standard, using a "range of reasonableness" standard instead of the federal environmental law settlement approval standard, according to Evans.

Asarco Inc., the debtors and Harbinger Capital Partners have all introduced competing restructuring plans in the long-running, complicated Asarco bankruptcy.

Under the terms of the finalized settlement, first announced in March, the company will allow general unsecured claims totaling approximately \$835 million and give \$275 million in cash to federal and state governments to cover its share of environmental liability at the affected sites.

The settlement provides that owned, nonoperating sites with environmental issues will be placed into custodial trusts along with approximately \$233 million for remediation and an additional \$27.5 million for administration costs.

Claims relating to the majority of unresolved state and federal government environmental claims will be allowed as unsecured claims totaling about \$100 million, while government claims related to residual environmental settlement sites will be allowed as administrative claims totaling \$14 million and unsecured claims totaling \$736 million, according to the settlement.

Asarco, active in mining, smelting and refining for more than a century, has been dealing for years with a slew of environmental claims from federal and state governments, Indian tribes and private parties, as well as asbestos-related personal injury claims potentially worth billions of dollars.

The Tucson, Ariz.-based company filed for bankruptcy in August 2005, listing \$100 million in both assets and liabilities.

Asarco Inc. is represented on appeal by Milbank Tweed Hadley & McCloy LLP and Haynes and Boone LLP.

Asarco LLC is represented by Baker Botts LLP and Jordan Hyden Womble Culbreth & Holzer PC.

The case is In re: Asarco LLC et al., case number 05-21207, in the U.S. Bankruptcy Court for the Southern District of Texas.

--Additional reporting by Erin Marie Daly