

Oil, Metal Cos. Can't Escape Asarco Suit Over \$113M Cleanup

By Juan Carlos Rodriguez

Law360, New York (December 03, 2012) -- A federal judge on Friday said Asarco LLC's bid to recoup part of a \$113 million settlement over a contaminated Montana metals refinery can proceed, rejecting American Chemet Corp.'s and Atlantic Richfield Co.'s argument that the claim is time-barred.

Asarco is seeking contributions to the settlement — reached with the federal government on June 5, 2009, under the Comprehensive Environmental Response, Compensation, and Liability Act — because it said defendants American Chemet and Atlantic Richfield also contaminated the site.

U.S. District Judge Dana L. Christensen said a party who has been sued under CERCLA may bring a contribution claim against other liable parties within three years, and Asarco's claims fall within that limit.

"American Chemet and Atlantic Richfield insist that the statute of limitations expired June 4, 2012, and that Asarco's complaint was filed a day late," Judge Christensen said.

But the judge said it is reasonable to construe the statute of limitations in light of the Federal Rules of Civil Procedure, which provides that if the statute at issue does not set out a different method for computing the time, the day of the triggering event — in this case, the entry of a judicially approved settlement — should be excluded from the calculation of the statute of limitations.

He acknowledged that the statute of limitations had expired for pursuing contribution for the costs incurred in 1990, 1998 and February 2009 consent decrees, but said the extent to which those costs are the same as those for which Asarco now seeks contribution cannot be decided on a motion to dismiss.

Asarco and its predecessors operated a metals refinery in East Helena, Mont., for more than 100 years, according to the judge's order. Lead and zinc smelting and metals processing operations deposited numerous hazardous substances into the soil, surface water and groundwater in the area. Asarco's facility was closed on April 4, 2001.

East Helena was named a Superfund site in 1984. In 1990 and 1998, Asarco entered settlement agreements with the U.S. Environmental Protection Agency concerning remediation of various aspects of the site. In 2005, the company filed for bankruptcy. Within that proceeding, it entered two additional settlements with the EPA regarding its liability at the East Helena site, among other sites around the nation.

The judge also rejected American Chemet's argument that Asarco cannot make its contribution claims because Asarco didn't raise the issue in its court approved reorganization plan.

"It is not reasonable to argue that Asarco did not preserve its contribution claims for the East Helena Site. Asarco preserved 'any and all' CERCLA contribution claims in its reorganization plan and repeated that it preserved 'all rights and interests' in contribution actions in its schedule," Judge Christensen said.

He also shot down American Chemet's assertion that Asarco failed to join all potentially responsible parties in its lawsuit.

"American Chemet argues that Asarco must also join Burlington Northern Railroad because it is a potentially responsible party. However, '[i]t has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit,'" Judge Christensen said.

Asarco is represented by Gregory Evans and James G. Warren of Integer Law Corp. and Stefan T. Wall of McMahon Wall & Hubley PLLC.

American Chemet is represented by R. Allan Payne and Jacqueline R. Papez of Doney Crowley Payne Bloomquist PC.

Atlantic Richfield is represented by Randy J. Cox of Boone Karlberg PC, by William J. Duffy, Robert W. Lawrence and Eric P. Waeckerlin of Davis Graham & Stubbs LLP and by Elizabeth H. Temkin of Temkin Wielga & Hardt LLP.

The case is Asarco LLC v. Atlantic Richfield Co. et al., number 6:12-cv-00053 in the U.S. District Court for the District of Montana.

--Editing by Rebecca Flanagan.