

**IN THE UNITED STATES BANKRUPTCY COURT
OF THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, et al.,	§	Chapter 11
	§	
Debtors	§	Jointly Administered
	§	

**ANNUAL REPORT, FINANCIAL STATEMENTS AND RESULTS OF OPERATIONS
OF THE ASARCO ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
FOR FISCAL YEAR ENDED DECEMBER 31, 2023**

David F. Levi, as Trustee of the ASARCO Asbestos Personal Injury Settlement Trust (the “**Asbestos Trust**” or “**Trust**”), respectfully files this Annual Report, Financial Statements and Results of Operations for Fiscal Year Ended December 31, 2023 (the “**Report**”), pursuant to Asarco Incorporated and Americas Mining Corporation’s Seventh Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code, as Modified on August 20, 2009, August 23, 2009, and August 27, 2009 (the “**Parent Plan**”) and the ASARCO Asbestos Personal Injury Settlement Trust Agreement (the “**Trust Agreement**”).

I. General

On August 9, 2005, ASARCO LLC (“**ASARCO**”) filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. Various affiliates of ASARCO (together with ASARCO, the “**Debtors**”) filed bankruptcy petitions both before and after ASARCO’s bankruptcy filing. The Debtors’ respective bankruptcy cases are jointly administered under Case No. 05-21207. On September 11, 2009, the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”) entered its amended recommendation

in favor of confirmation of the Parent Plan. On November 13, 2009, the United States District Court for the Southern District of Texas (the “**District Court**”) adopted the Bankruptcy Court’s recommendation and entered its Memorandum Opinion, Order of Confirmation, and Injunction, confirming the Parent Plan (as modified on November 16, 2009, and December 3, 2009, the “**Confirmation Order**”). *See* Dkt. No. 79, 80 and 96 in Case No. 2:09-CV-00177.

To address the substantial asbestos-related liabilities of the Debtors, the Parent Plan established the Asbestos Trust in accordance with the Trust Agreement. On December 9, 2009, the Effective Date¹ of the Parent Plan, the Asbestos Trust was created and funded with over \$900 million in assets, including more than \$650 million in cash plus a \$280 million secured note from Reorganized ASARCO (the “**ASARCO Note**”). In addition, the Asbestos Trust received \$27.5 million to fund the operating expenses of the Asbestos Trust. *See* Parent Plan, § 6.7. David F. Levi is now the sole Trustee of the Trust.

Under the Trust Agreement, the Trust Advisory Committee (“**TAC**”) represents the holders of present Asbestos Personal Injury Claims, and the Future Claims Representative (“**FCR**”) represents the holders of future Asbestos Personal Injury Claims. *See* Trust Agreement, §§ 5.2 and 6.1. The TAC members are Steven Kazan, Steven T. Baron, Alan R. Brayton, Bryan O. Blevins, and Perry J. Browder. The Hon. Robert C. Pate is the FCR.

The Trust Agreement, at section 2.2(g), requires that the Trustee meet with the TAC and FCR no less often than quarterly. The Trustee held quarterly meetings with the TAC and the FCR on February 22, 2023, June 7, 2023, September 19, 2023, and November 15, 2023.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Parent Plan.

The Trustee held weekly Trust meetings in 2023 by telephone, beginning on January 2, 2023.

The principal office of the Asbestos Trust is 1100 N. Market Street, 4th Floor, Wilmington, DE 19890. The administrative office of the Asbestos Trust is: Attention David F. Levi, Trustee, c/o Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation, 2323 Bryan Street, Suite 2200, Dallas, TX 75201.

The Asbestos Trust continued its retention of the following: Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation (general counsel); CBIZ (accounting and tax work); BDO USA LLP (independent auditors); AON Risk Services Central, Inc. (insurance agent); Legal Analysis Systems (consultant regarding asbestos personal injury claims); Verus Claims Services, LLC (“**Verus**”) (claims processor); Bank of America Private Bank (financial consultant, money manager, custodian banking and other banking services); Citi Private Bank (financial consultant, money manager, custodian banking and other banking services); Anderson Kill P.C. (insurance coverage counsel); and Morgan Stanley (asset manager and advisor). The Trust retained local counsel and other consultants, as needed.

The TAC continued its retention of Caplin & Drysdale as its counsel. The FCR continued his retention of Clark Hill PLC as his counsel.

The Asbestos Trust’s general counsel, Stutzman, Bromberg, Esserman & Plifka, P.C., serves as the custodian of Trust records.

The Asbestos Trust continued liability insurance for the Trustee, the members of the TAC, and the FCR.

In 2023, the Asbestos Trust (i) invested and managed its assets; (ii) adopted a budget for the next year; (iii) processed and paid Pre-Petition Liquidated Asbestos Personal Injury

Claims (as defined in the ASARCO Asbestos Personal Injury Settlement Trust Distribution Procedures (“**TDP**”)); (iv) continued to examine and analyze as needed ASARCO’s, LAQ’s, and CAPCO’s asbestos sales records and historical asbestos records; (v) managed the Asbestos Trust’s website, www.asarcotrust.com; (vi) accepted Asbestos Personal Injury Claims based on CAPCO Exposure, LAQ Exposure and/or both, as defined in the TDP; (vii) processed both CAPCO claims and LAQ claims, providing directions to the claims facility for the liquidation of the Asbestos Personal Injury Claims; (viii) continued paying Asbestos Personal Injury Claims; (ix) reviewed accounting and auditing functions for the Trust; (x) consulted with Legal Analysis Systems (“**LAS**”) regarding the payment percentage, claims data, and forecasts of the Trust’s liability for Asbestos Personal Injury Claims; (xi) sought dismissals of any state court litigation filed against ASARCO in violation of the 524(g) channeling injunction; (xii) handled and processed any premises claims; (xiii) posted appropriate notices on the Trust’s website for all claimants; (xiv) conducted audits of Asbestos Personal Injury Claims pursuant to the Trust’s claims audit program; (xv) renewed any necessary insurance policies to replace expiring policies; (xvi) monitored the methodology for liquidating Asbestos PI Claims under the Individual Review procedures of the TDP; (xvii) performed all functions required for Trust governance, including maintaining the Trust’s books and records, approval of the budget for the next year, and other processes; (xviii) evaluated cyber security protection issues and renewed cyber security insurance; (xix) addressed any subpoenas and discovery requests to produce information as appropriate; (xx) applied procedures related to potential lien, subrogation and reimbursement claims, (xxi) conducted due diligence reviews of operations regarding Trust business at Verus, Bank of

America Private Bank and Citi Private Bank; and (xxii) supervised and managed any litigation affecting or involving the Trust.

The process for reviewing and liquidating Asbestos PI Claims is governed by the TDP. The TDP recognizes that estimates of liabilities and the value of assets fluctuate over time and, accordingly, applies a “Payment Percentage” to the liquidated value of allowed Asbestos PI Claims other than a claim involving Other Asbestos Disease (Disease Level I-Cash Discount Payment) and Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy. *See* TDP § 2.3. The TDP directs the Trustee to periodically “reconsider the then applicable Payment Percentage to assure that the Payment Percentage is based on accurate and current information,” and to, if necessary, change the Payment Percentage with the consent of the TAC and the FCR. *Id.* at § 4.2. In making this determination, the Trustee is directed to “base their determination of the Payment Percentage on current estimates of the number, types, and values of present and future Asbestos Personal Injury Claims, the value of the assets then available to the Asbestos Trust for payment of Asbestos Trust Determined Claims, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of full value to all holders of Asbestos Personal Injury Claims.” *Id.* The Trustee is further directed to “exercise common sense and flexibly evaluate all relevant factors.” *Id.* In 2023, the Trust engaged LAS to assist the Trust in evaluating the payment percentage. LAS continues to analyze the payment percentage as of the date of this Report, and the Trustee has not concluded his evaluation. The Payment Percentage for 2023 was 35%.

II. Asbestos Personal Injury Claims

The Asbestos Trust came into existence on December 9, 2009. In 2023, the Trustee accepted and processed 46 Pre-Petition Liquidated Asbestos Personal Injury Claims, ultimately paying, after application of the Payment Percentage, \$147,704 on account of such Pre-Petition Liquidated Asbestos Personal Injury Claims.

In addition, in 2023 the Asbestos Trust, through Verus, its claims processing facility, continued accepting unliquidated Asbestos Personal Injury Claims. Verus processed and the Trust paid various Asbestos Personal Injury Claims in 2023. Through December 31, 2023, 501,464 unliquidated Asbestos Personal Injury Claims were submitted to the Asbestos Trust, as follows:

Disease Level	Claims to date	Claims in 2023
Other Asbestos Disease (Level I)	18,320	200
Nonmalignant Asbestos Disease (Level II)	193,051	9,709
Nonmalignant Asbestos Disease (Level III)	114,622	8,326
Severe Asbestosis (Level IV)	8,568	319
Other Cancer (Level V)	21,400	1,625
Lung Cancer 2 (Level VI)	13,369	752
Lung Cancer 1 (Level VII)	69,944	5,098
Mesothelioma (Level VIII)	43,858	2,417
Unknown	18,332	327
Total:	501,464	28,773

Of the 28,773 Asbestos Personal Injury Claims submitted to the Trust in 2023, 739 have been withdrawn, 6,721 have been deferred, and 2,863 have been approved for payment, with the remainder in process with the Trust. Since inception, not including premises claims, the Trust has paid a total of \$650,023,918 on account of unliquidated Asbestos Personal Injury Claims, of which \$69,803,508 was paid in 2023 (This total excludes any refunds received for claims paid in previous years.)

Under section 3.3 of the Trust Agreement, the Trust reports payments for Asbestos PI Trust Expenses. The Trust's operating expenses are listed in the Supplemental Information to the attached audited financial statements as addressed below.

III. Compensation and Expenses of Trustee, TAC, and FCR

Under section 4.5(c) of the Trust Agreement, the Asbestos Trust reports to the Bankruptcy Court the amount of compensation and expenses paid to the Trustee. The Trustee has received, on an accrual basis, compensation, and reimbursement for out-of-pocket expenses for the fiscal year ending December 31, 2023, as follows:

Trustee	\$376,581.98
Delaware Trustee	\$3,000, plus \$1,500 Delaware Agent Fees

Under section 5.6 of the Trust Agreement, the Asbestos Trust reports to the Bankruptcy Court the amount of compensation and expenses paid to the TAC members. The TAC has received, on an accrual basis, compensation and reimbursement for fees and expenses, including counsel, during the fiscal year ending December 31, 2023, as follows:

TAC	\$ 52,443.33
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Under section 6.5 of the Trust Agreement, the Asbestos Trust reports to the Bankruptcy Court the amount of compensation and expenses paid to the FCR. The FCR has received, on an accrual basis, compensation and reimbursement for fees and expenses, including counsel, during the fiscal year ending December 31, 2023, as follows:

FCR	\$ 24,420.00
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IV. Financial Statements

A copy of the Asbestos Trust's audited financial statements for the year ending December 31, 2023, including a balance sheet as of December 31, 2023, and a statement of

operations for 2023, is attached hereto as Exhibit A. Exhibit A also includes BDO USA LLP's opinion as to the fairness of the financial statements' presentation of the cash and investments available for the payment of claims and as to the conformity of the financial statements with special purpose accounting methods.

The Asbestos Trust provided copies of this Report to the TAC and FCR on April 26, 2024.

V. Certification

The Trustee certifies that he has performed pursuant to and in compliance with the Parent Plan, the Trust Agreement, the TDP, the Confirmation Order, and such other Parent Plan documents and Bankruptcy Court orders pertaining to the operation of the Asbestos Trust during the fiscal year ended December 31, 2023.

TRUSTEE:

/s/David F. Levi
DAVID F. LEVI

Respectfully submitted this 30th day of April 2024,

**STUTZMAN, BROMBERG,
ESSERMAN & PLIFKA,
A PROFESSIONAL CORPORATION**

By: /s/ Peter D'Apice

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**ATTORNEYS FOR THE ASARCO
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SETTLEMENT TRUST**

CERTIFICATE OF SERVICE

The undersigned certifies that on this 30th day of April 2024, the foregoing ANNUAL REPORT, FINANCIAL STATEMENTS AND RESULTS OF OPERATIONS OF THE ASARCO ASBESTOS PERSONAL INJURY SETTLEMENT TRUST FOR FISCAL YEAR ENDED DECEMBER 31, 2023, was served via ECF on all those parties receiving such notice through the Court's CM/ECF system.

/s/Peter D'Apice
Peter C. D'Apice