



ENTERED
09/02/2009

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

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

**STIPULATION REGARDING OBJECTIONS ASSERTED
BY CHARTIS COMPANIES TO PARENT'S PLAN #12732**

This stipulation is entered into by the following parties (collectively, the "Parties"): ASARCO Incorporated and Americas Mining Corporation (collectively, the "Parent"); Robert C. Pate, as the Future Claims Representative (the "FCR"); the Official Committee of Asbestos Claimants (the "ACC"); and American Home Assurance Company and Lexington Insurance Company, together with all other member companies of American International Group, Inc. (collectively, the "Chartis Companies").¹

WHEREAS, the Chartis Companies filed objections to the plan or reorganization filed by the Parent;

WHEREAS, the Parties have engaged in good-faith, arm's length negotiations to resolve the objections filed by the Chartis Companies; and

WHEREAS, the Parties have reached an agreement, as reflected in this Stipulation;

IT IS HEREBY STIPULATED BETWEEN AND AMONG THE PARTIES AS FOLLOWS:

1. The Parent agrees that any Confirmation Order it proposes with respect to the Parent's Plan, as it may be modified, will include the agreed provisions contained in **Exhibit 1**

¹ Unless otherwise defined in this Stipulation, all capitalized terms shall have the same meaning as in the Parent's Plan and the related Glossary.

hereto. The Parent will use its best efforts to see that such language is contained in any Confirmation Order.

2. The FCR and the ACC agree that the provisions contained in **Exhibit 1** hereto should be included in any Confirmation Order.

3. In exchange for and in reliance on the promises set forth in Paragraphs 1 and 2, and subject to the inclusion by the Bankruptcy Court and District Court of the provisions contained in **Exhibit 1** in any Confirmation Order, the Chartis Companies hereby withdraw their objections to the Parent's Plan and their Proposed Findings of Fact and Conclusions of Law concerning the Parent's Plan.

[Signatures on Following Page]

<p>HAYNES AND BOONE, LLP</p> <p>By: <u>/s/ Charles A. Beckham, Jr.</u> Charles A. Beckham, Jr. State Bar No. 02016600 Trey Monsour State Bar. No. 14277200 1221 McKinney, Suite 2100 Houston, Texas 77010 (713) 547-2000 (713) 547-2600 (facsimile)</p> <p>-and-</p> <p>MILBANK, TWEED, HADLEY & MCCLOY LLP</p> <p>Robert Jay Moore (CA 77495) 601 South Figueroa Street, 30th Floor Los Angeles, CA 90017 (212) 892-4000 (212) 629-5063 (facsimile)</p> <p>Robert E. Winter (RW 9937) International Square Building 1850 K Street, N.W. Washington D.C. 20006 (202) 835-7500 (202) 835-7586 (facsimile)</p> <p>Counsel to ASARCO Incorporated and Americas Mining Corporation</p>	<p>ZEICHNER ELLMAN & KRAUSE</p> <p>By: <u>/s/ Michael S. Davis</u> Michael S. Davis Robert Guttman 575 Lexington Avenue New York, New York 10022 (212) 223-0400 (212) 753-0396 (facsimile)</p> <p>-and-</p> <p>JACKSON & CAMPBELL, P.C.</p> <p>Arthur D. Burger 1120 20th Street, N.W., South Tower Washington, D.C. 20036-3437 (202) 457-1600 (202) 457-1678 (facsimile)</p> <p>Counsel to American Home Assurance Company and Lexington Insurance Company</p>
<p>STUTZMAN, BOMBERG, ESSERMAN & PLIFKA, A PROFESSIONAL CORPORATION</p> <p>By: <u>/s/ Steven A. Felsenthal</u> Sander L. Esserman State Bar No. 06671500 Steven A. Felsenthal State Bar No. 0688900 Peter C. D'Apice State Bar No. 0537783 Jacob L. Newton State Bar No. 24046523 2323 Bryan Street, Suite 2200 Dallas, Texas 75201 (214) 969-4900</p> <p>Counsel to the Official Committee of Asbestos Claimants</p>	<p>OPPENHEIMER, BLEND, HARRISON & TATE, INC.</p> <p>By: <u>/s/ Raymond W. Battaglia</u> John H. Tate, II State Bar No. 09666500 Raymond W. Battaglia State Bar No. 01918055 Debra L. Innocenti State Bar No. 24046135 San Antonio, Texas 78205 (210) 224-2000</p> <p>Counsel to Future Claims Representative Robert C. Pate</p>

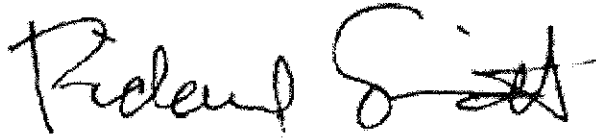
ORDER APPROVING STIPULATION

Based upon the foregoing Stipulation, it is hereby

ORDERED, that the foregoing Stipulation is hereby approved; and it is further

ORDERED, that the agreed provisions contained in **Exhibit 1** hereto shall be included in any Confirmation Order entered by this Court with respect to the Parent's Plan.

Dated: September 2, 2009

A handwritten signature in black ink, appearing to read "Richard S. Schmidt", written over a horizontal line.

RICHARD S. SCHMIDT,
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

1. **To be added to Exhibit 21 to the Parent's Plan:** "Agreement between the Parent and Chartis Companies as set forth in the Confirmation Order under the heading 'Agreement with Chartis Companies.'"

2. **To be added to Glossary:**

- "AHAC" means American Home Assurance Company.
- "Chartis Companies" means AHAC and Lexington, together with all other member companies of American International Group, Inc., including all predecessors, successors, affiliates, subsidiaries and assigns.
- "Chartis Defense Funding Agreement" means the Defense Funding Settlement Agreement Between ASARCO and AHAC with Respect to Asbestos Settlement Claims (2002) together with a certain First Amendment to July 11, 2002 Defense Funding Settlement Agreement Between Asarco and American Home with Respect to Asbestos Premises Claims.
- "Chartis Indemnity Agreement" means the agreement between ASARCO, AHAC and Lexington entitled "Settlement Agreement" and which was executed by Kevin McCaffrey for ASARCO on September 29, 2003 and by Christopher Eskeland for AHAC and for Lexington on October 28, 2003
- "Chartis Premises Settlement Agreements" mean (i) the Chartis Defense Funding Agreement, and (ii) the Chartis Indemnity Agreement, each of which relates to Asbestos Premises Liability Claims.

- “Chartis Products Settlement Agreements” mean the Agreement and Release executed by Kevin McCaffrey on behalf of LAC D’Amiante Du Quebec, Ltee and ASARCO on March 12, 2003 and executed by Stephen A. Parness on behalf of AHAC and Lexington, substituting and replacing an Agreement and Release between LAQ and AHAC executed on or about March 20, 1986; the March 20, 1986 Agreement and Release and all amendments thereto; and a Settlement Agreement Between Lexington Insurance Company and Asarco Incorporated Regarding Products Claims which was executed by Kevin McCaffrey on September 29, 2003 and executed by Christopher Eskeland on October 28, 2003, referencing Lexington’s prior participation in a 1995 Agreement Governing London Policies Issued To Asarco Incorporated.
- “Lexington” means Lexington Insurance Company.

3. **Revisions to Asbestos TDP:**

The 4th paragraph of Section 5.3(c) of the Asbestos TDP shall be revised as follows:

- delete “with such notice and information as may be required under” and replace with “pursuant to.” The revised sentence will read, “The Asbestos Trust shall tender the lawsuit to the applicable Asbestos Insurance Company for defense and indemnification pursuant to the terms and conditions of the Asbestos In-Place Insurance Coverage and/or CIP Agreements.”

The 5th paragraph of Section 5.3(c) of the Asbestos TDP shall be revised as follows:

- delete “accept the tender of the lawsuit” and replace with “respond to the tender consistent with the terms and conditions of the Asbestos In-Place Insurance Coverage and/or CIP Agreements,”. The revised sentence will read, “In the event that the Asbestos Insurance Company does not respond to the tender consistent with the terms and conditions of the Asbestos In-Place Insurance Coverage and/or CIP Agreements, the claimant may proceed against the Asbestos Trust for the entry of a judgment provided the claimant covenants not to execute on the judgment.”

The 7th paragraph of Section 5.3(c) of the Asbestos TDP shall be revised as follows:

- delete “accept the tender” in the first sentence and replace with “respond to the tender consistent with the terms and conditions of the Asbestos In-Place Insurance Coverage and/or CIP Agreements,”. The revised first sentence will read, “In the situation where the Asbestos Insurance Company does not respond to the tender consistent with the terms and conditions of the Asbestos In-Place Insurance Coverage and/or CIP Agreements, the Asbestos Trust will assess the good faith of the Asbestos Insurance Company.”
- delete “proceed with appropriate litigation against the Asbestos Insurance Company” and replace with “proceed against the Asbestos Insurance Company in accordance with any applicable dispute resolution procedures set

forth in the Asbestos In-Place Insurance Coverage and/or CIP Agreements.”. The revised sentence will read, “If the Asbestos Trust concludes that the Asbestos Insurance Company did not act in good faith, the Asbestos Trust shall provide the claimant with written notice of a right of the claimant to proceed against the Asbestos Insurance Company in accordance with any applicable dispute resolution procedures set forth in the Asbestos In-Place Insurance Coverage and/or CIP Agreements, with the Asbestos Trust subrogated to any recovery by the claimant from the Asbestos Insurance Company to the extent of a payment by the Asbestos Trust to the claimant under this Section 5.3(c).”

- delete “such litigation” and replace with “mediation, to the extent that mediation is required by any applicable Asbestos In-Place Insurance Coverage and/or CIP Agreements” in the next sentences of Section 5.3(c). The revised sentence will read, “Within ninety (90) days of such written notice but, in no event, not later than six (6) months before the running of the applicable statute of limitations, the claimant shall provide written notice to the Asbestos Trust of whether the claimant will proceed with mediation, to the extent that mediation is required by any applicable Asbestos In-Place Insurance Coverage and/or CIP Agreements.”
- Add “mediation and/or” before “litigation” in the next sentence. The revised sentence will read, “The Asbestos Trust shall cooperate with the claimant in the prosecution of the mediation and/or litigation.”

- Delete the first reference to “litigation” and replace with “mediation, or elects not to pursue litigation that is otherwise permitted under any Asbestos In-Place Insurance Coverage and/or CIP Agreements,” in the next sentence. Also in that sentence, add “mediation and/or” before the second reference to “litigation.” The revised sentence will read, “If the claimant elects not to proceed with the mediation, or elects not to pursue litigation that is otherwise permitted under any Asbestos In-Place Insurance Coverage and/or CIP Agreements, the Asbestos Trust reserves the right to commence and prosecute the mediation and/ or litigation against the Asbestos Insurance Company.”
- Add the following as the next to last sentence in paragraph 7: “In any litigation or mediation arising out of a dispute over the response to a tender of a lawsuit, the Asbestos Insurance Company may assert any right, claim or defense it may have under any applicable Asbestos In-Place Insurance Coverage and/or CIP Agreements.”

4. **To be added to the Confirmation Order:**

AGREEMENT WITH CHARTIS COMPANIES

(i) _____. The Parent and Chartis Companies have reached an agreement as set forth in this Section entitled “Agreement with Chartis Companies”, and accordingly, (i) this Section constitutes an Asbestos Insurance Settlement Agreement, as such term is defined in the Glossary to the Parent’s Plan and (ii) Chartis Companies are included within the definition of Settling Asbestos Insurance Companies:

a. Chartis Companies acknowledge, and waive any and all rights to dispute, that on the Effective Date all rights to pursue and receive the benefits and proceeds of any of the Chartis Premises Settlement Agreements shall be transferred and assigned in their entirety to the Asbestos Trust in accordance with Article 6.3 of the Parent's Plan and shall vest thereafter in the Asbestos Trust in accordance with Article 6.4 of the Parent's Plan, assuming that the Parent's Plan is confirmed by the Bankruptcy Court without modification of such Articles.

b. The Chartis Companies acknowledge, and waive any and all rights to dispute, that following the Effective Date, the Asbestos Trust shall stand wholly in the shoes of the Debtors with regard to the Chartis Premises Settlement Agreements, as if the Asbestos Trust had been the party with whom such agreements were executed originally. The Asbestos Trust shall be substituted entirely for the Debtors with regard to any and all prepetition rights and obligations of the Debtors to the Chartis Companies under the Charties Premises Settlement Agreements as well as any and all prepetition rights and obligations of the Chartis Companies to the Debtors under these agreements. Chartis Companies specifically agree not to take the position that any prepetition rights and obligations of and to the Debtors with respect to Asbestos Premises Liability Claims have been discharged by confirmation of the Parent's Plan. Also, to the extent that any actions are taken in the future with regard to the Chartis Premises Settlement Agreements, including any changes or modifications to any terms or conditions therein, all such actions will take place between the Chartis Companies and the Asbestos Trust, and without any involvement of Reorganized ASARCO.

c. Chartis Companies wholly and entirely release the Debtors and Reorganized ASARCO, for now and until the end of time, of any rights, liabilities, responsibilities, involvements, obligations or otherwise with regard to the Chartis Premises Settlement Agreements; provided, however, that Reorganized ASARCO shall provide reasonable access to its personnel, its information and its premises, authorize all former experts and/or corporate representatives to assist with defense, cooperate with discovery and provide witnesses and documents reasonably needed to defend Asbestos Premises Liability Claims, all without any requirement that defense counsel seek or obtain a subpoena. Further, Reorganized ASARCO shall not voluntarily assist any claimant to assert any claim or suit covered by the Chartis Premises Settlement Agreements.

d. The Chartis Companies confirm that, prepetition, they had assumed their obligations to pay defense and indemnification in accordance with, and to the extent limited by, the Chartis Premises Settlement Agreements. They acknowledge, and waive any and all rights to dispute, that post-confirmation they will continue to be bound by the Chartis Premises Settlement Agreements, along with the Confirmation Order, the Parent's Plan and all related documents, including the Asbestos TDP, except for the following:

(i) the designation in the Chartis Premises Settlement Agreements of contact personnel and agents of the Parties shall be adjusted as appropriate, including but not limited to the possible substitution of Porzio Bromberg & Newman, M. Elizabeth Medaglia, Kevin McCaffrey and Christopher Eskeland;

(ii) post-confirmation, Chartis Companies will have the option, together with other involved insurers, if any, to select and retain defense counsel and control the defense of such claims;

(iii) for those suits for which Chartis Companies opt to select and retain defense counsel and control the defense of such claims as set forth in subsection (d)(ii) above, the Billing Guidelines set forth in Exhibit A to the Defense Funding Agreement shall be rendered moot and unenforceable; and

(iv) Nothing in the Confirmation Order, the Parent's Plan or the supporting documents, including but not limited to any and all injunctions, shall preclude the operation of the seventh paragraph of Section 5.3(c) of the TDP, revised in accordance with this agreement, which establishes a procedure for resolution of 'the situation where the Asbestos Insurance Company does not respond to the tender of the lawsuit consistent with the terms and conditions of the Asbestos In-Place Insurance Coverage and/or CIP Agreements.

e. Nothing herein shall be deemed to enlarge or diminish in any way the dollar amount of the obligations of Chartis Companies under the Chartis Premises Settlement Agreements. For the avoidance of doubt, it is acknowledged that to the extent the Chartis Premises Settlement Agreements provide for allocation of payment for defense or indemnity, those allocations of payment will continue to be applicable under the agreement set forth herein, including but not limited to any obligation of the Asbestos Trust to pay the portion of defense costs that would have been borne by Debtors under the Defense Funding Agreement.

f. If Reorganized ASARCO exercises the right reserved in the Parent's Plan to retain the Asbestos Insurance Recoveries, which includes the right to pursue and receive the benefits and proceeds of the Chartis Premises Settlement Agreements, then Chartis Companies acknowledge, and waive any and all rights to dispute, that the right to pursue and receive the benefits and proceeds of these agreements will remain in their entirety with Reorganized ASARCO. If the Parent's Plan is not confirmed as filed on August 20, 2009 and modified on August 23 and 27, 2009, and modifications are made which require the transfer and assignment by the Debtors to a different entity of the right to pursue and receive the benefits and proceeds of the Chartis Premises Settlement Agreements, the Chartis Companies acknowledge, and agree not to dispute, that transfer and assignment as well, provided such change does not adversely affect or alter the obligations or rights of the insurers as otherwise set forth herein.

g. Further, the Chartis Companies acknowledge, and waive any and all rights to dispute, that all insurance policies that are identified in the Chartis Premises Settlement Agreements shall continue to be Asbestos Insurance Policies as defined in the Parent's Plan, but only with regard to Asbestos Premises Liability Claims and subject to the Chartis Premises Settlement Agreements.

h. Except as expressly set forth in this Section entitled "Agreement with Chartis Companies", the parties reaffirm and agree they are bound by all the provisions of all the Chartis Premises Settlement Agreements and all Parent's Plan provisions, specifically including the Asbestos TDP and Article 12.4 of the Parent's Plan. Nothing herein shall be construed to require Chartis Companies to pay any amount not required by the Chartis Premises Settlement Agreements or pay any such amount sooner than due under the

Chartis Premises Settlement Agreements. Also, post-confirmation, neither Reorganized ASARCO nor Chartis Companies will have, or will attempt to assert, any rights or obligations pursuant to the Chartis Products Settlement Agreements, and Chartis Companies will not have any rights or obligations with regard to any asbestos products liability claims, whether past, present, future, paid or unpaid.

i. Chartis Companies are to be ASARCO Protected Parties under the terms of the Parent's Plan. The parties have agreed that the entire agreement embodied in this Section entitled "Agreement with Chartis Companies" is contingent upon a confirmation order that approves the protections afforded to ASARCO Protected Parties as set forth in the Parent's Plan filed on August 20, 2009 and modified on August 23 and 27, 2009.

j. Nothing herein shall alter the Stipulation and Order Regarding Partial Disallowance of, and Preservation of Rights in Connection with, Various Proofs of Claim Filed by AHAC, et al. ("POC Stipulation 11248") (filed at docket number 11248), except that to the extent any claim or any part of a claim that is preserved by POC Stipulation 11248 arises from or relates to either the Chartis Premises Settlement Agreements or the Chartis Products Settlement Agreements, such claim or part of such claim is hereby withdrawn with prejudice.

k. Reorganized ASARCO or the Asbestos Trust, as the case may be, shall, within 60 days after the Effective Date, take such actions that are reasonably necessary to dismiss with prejudice AHAC and Lexington from any avoidance actions brought by any of the Debtors, including:

- ASARCO LLC v. American Home Assurance Company, Adv. Pro. No. 07-2065;

- ASARCO LLC v. Lexington Insurance Company, Adv. Pro. No. 07-2067; and
- Lac D'Amiante du Québec Ltée, et al v. Allstate Insurance Company, et al. Adv. Pro. No. 07-2025.

It is further agreed that the Debtors or Reorganized ASARCO, as the case may be, hereby release all avoidance claims against the Chartis Companies.

l. Any and all disclosures herein of terms or conditions of the Chartis Premises Settlement Agreements are necessary to this Confirmation Order, are made with the consent of all parties, and do not waive or alter the governing nature of any and all confidentiality provisions in the agreements for all purposes.

m. This Section entitled "Agreement with Chartis Companies" is binding upon the Chartis Companies, the Parent, the FCR, the Asbestos Claimants' Committee, and it shall be binding upon the Asbestos Trust after such trust is formed. To the extent any provision of the TDP is inconsistent with this Section of the Confirmation Order, this Section shall govern.