05-BK-037

August 29, 2005

TO: Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Thurgood Marshall Federal Judiciary Bldg

Re Comment in re Interim Bankruptcy Rules

Dear Sir

The following information and enclosures are submitted for consideration from the perspective of a Retiree facing the prospect of having his ERISA Employee Benefit Plan Entitlements evolve into nothing more than illusory promises as the result of the Chapter 11 Bankruptcy filing by a former employer. Enclosed are copies of recent letters transmitted to the US TRUSTEE for the Southern and Western Districts of Texas.

Respectfully submitted

VICTOR A. KARL
11 Diane Road
Manahawkin, NJ
08050
609-597-1948

August 29, 2005 BY FAX p1 of 2 Pages

Richard W. Simmons
US TRUSTEE
Office of the U.S. Trustee
For the Southern & Western Districts of Texas

Re ASARCO LLC(Debtor) Case No 05-21207
Employee Benefit Issues incl DIBS Plan

Dear Sir:

As a 73 year old Retiree of ASARCO Incorporated, at the outset, I respectfully submit that in the event a RETIREE COMMITTEE is established in connection with this Chapter 11 Bankruptcy proceeding, it would be inappropriate for a labor organization or an affiliated entity or individual of such an organization as the International Steelworkers Union to represent my interests, and that of similarly situated SALARIED RETIREES, as a class, with respect to entitlements under various Employee Benefit Plans. That said, I am a participant in the ASARCO RETIREMENT INCOME PLAN for SALARIED EMPLOYEES, the ASARCO Group Life Insurance Plan which provides post-retirement Group Life Insurance coverage, the Medicare Supplement Plan(MSP Plan) providing reimbursement of covered medical expenses for the eligible retiree and spouse, and lastly the Deferred Income Benefit System(DIBS Plan). All are 'employee benefit plans' within the meaning of the ERISA and based upon my personal knowledge and research with litigating the issues it is submitted that my entitlement to benefits under these Plans are very arguable based on the caselaw in the Second Circuit(which is a proper forum for Salaried Employees previously employed for decades at the corporate office of ASARCO in NYC).The settled law in 274F3d76 and 274F3d90- Cert Denied 1/27/03(01-1710) by recognizes a cause of action for CONTRACTUAL VESTING UNDER ERISA in a proper case.

I anticipate that the Debtor will attempt to abrogate its obligations under the foregoing Plans, all of which are not IRC qualified Plans, except for the Retirement Plan. I would like to address in particular the DIBS Plan which for all intents and purposes is a supplemental pension plan and has been held to be an "employee benefit plan" within the meaning of the ERISA.
I was employed for 17 plus years at the NYC corporate offices of ASARCO and retired 1/31/92. O/a 1983/1984, ASARCO established the DIBS plan for certain key personnel with the intent to retain such eligible individuals in its employ. Annual Statements received from ASARCO consistently refer to the DIBS payments a "SPECIAL PENSION". Under the Plan, KARL has received an annual payment of $8332 in January of each year since and including January 1993. This DIBS benefit under the terms of the Plan was for a term certain of 15 years, thus two(2) more payments are due and payable for January 2006 and 2007 and KARL has designated Contingent Beneficiaries in the event of his earlier demise. In a letter to KARL dated 11/11/99(just before ASARCO became a wholly-owned subsidiary of Grupo Mexico) from RW Hildebrand, a senior

Human Resources executive in charge of Employee Benefits, KARL entitlement to his DIBS payments in the future was reconfirmed.

By his employment in the service of ASARCO and eventual retirement under its Retirement Plan, KARL has performed all of the prerequisite conditions to perfect his right to a VESTED non-forfeitable DIBS benefit which should be treated as such for the purposes of this Chapter 11 Bankruptcy proceeding. It should be axiomatic that if a promisor itself is the cause of the failure of performance and thereby abrogates its legal obligation to unjustly enrich itself, this outcome should not be available to the Debtor herein. Justice and equity would not be served in such case.

Please advise should any additional information or clarification be required. The foregoing is submitted as true and correct to the best of my knowledge.

Respectfully submitted,

Victor A Karl

VICTOR A. KARL
11 Diane Road
Manahawkin, NJ 08050
609-597-1948

August 22, 2005 By Fax to 361-888-3263

FAXED 8/27/05
- 8/22 LETTER
- 8/29 (DATED) LETTER
LH

Richard W. Simmons
UNITED STATES TRUSTEE
Office of the U.S. Trustee
Southern & Western Districts of Texas

Re ASARCO LLC(Debtor) Case No 05-21207

Dear Sir

This refers to the voluntary petition for Chapter 11 Bankruptcy filed on August 9, 2005. I am a Salaried Exempt Retiree of ASARCO Incorporated and at age 73 now some sort of a Creditor.On August 15, I [illegible] a Dear Retiree letter dated Aug 10 from ASARCO LLC's CEO and President advising of the Chapter 11 filing. While it appears that my current pro se lawsuits in usdc-sdny(02civ5565 and 05civ6489) have been stayed by operation of law and that I am constrained from continuing such litigation, I am writing this letter to review some relevant chronology and to note that these lawsuits seek a ruling and/or will seek a ruling that my entitlements under three Erisa employee benefit plans, not the Retirement Plan, are vested and non-forfeitable as in the Second Circuit, the law is settled that the cause of action of Contractual Vesting under ERISA can obtain in a proper case (See the CA 2 companion cases 274F3d76 and 274F3d90, cert denied 1/27/03 in 01-1710) While this Chapter 11 proceeding will not adjudicate such claims, the real possibility of such VESTED benefits I respectfully submit should be taken into account in the Chapter 11 process so as to protect my future right to fully litigate them.

As to the ASARCO Retirement Income Plan in which I am a participant, a recent article in the Arizona Republic on Aug 11 by Max Jarman reported that "ASARCO also faces a pension deficit of $126 million that it has tried to reduce by cutting pension benefits. The retirees have sued the company to stop the action." I am not privy to the specific litigation referred to but I have long been concerned with the possibility that ASARCO has not been adequately funding its pension liabilities. That said, part of my pension is covered by an annuity from the AETNA and other retirees may have insurance contracts covering their entitlements eg by METLIFE. In the mid-1980s, ASARCO terminated its Salaried Retirement Plan and took a Reversion of Assets of approximately $40million, if my memory is correct and purchased Annuity contracts from Aetna to cover the past service liability at that time. Of course, if AETNA fails to fully pay the annuitized portion of such pensions in a timely manner, ASARCO should be held accountable for the annuitized portion at least as a guarantor.

ASARCO LLC recently appeared on the scene and on the ASARCO website and I was told authoritatively that it had assumed ASARCO Incorporated's liabilities. I do not know whether that was legal and binding for any purpose and I was not notified nor given the opportunity to approve such action nor was there any demonstration of ASARCO LLC', creditworthiness or financial viablility.
Respectfully submitted,