

## THE WORK

# Bankruptcy Border War Ends With Milbank Win For Grupo Mexico

Posted by Brian Baxter

A four-year bankruptcy battle for control of Asarco finally ended Wednesday when the Tucson-based mining company emerged from Chapter 11 and into the arms of its long lost parent, Grupo Mexico. It was the largest environmental claims settlement in bankruptcy history—and probably worth more than \$200 million in billable hours to legions of lawyers.

The matter entered its final stage last month in the border city of Brownsville, Texas, when U.S. district court judge Andrew Hanen approved a \$2 billion plan by Grupo Mexico to reacquire Asarco out of bankruptcy.

Struggling with debt from a 1999 leveraged buyout, striking workers, and a series of asbestos and environmental suits, Asarco filed for bankruptcy on August 11, 2005. Parent company Grupo Mexico, the third-largest copper producer in the world, thought bankruptcy court could overcome low commodity prices by shedding Asarco's financial and legal liabilities, while modifying its labor obligations. It wasn't nearly that simple.

"It turned out to be an extraordinarily expensive process that was far more costly and time consuming than I think anyone expected," says Grupo's lead outside lawyer, Milbank, Tweed, Hadley & McCloy financial restructuring partner Robert Moore. "There were a lot of lawyers, interests, and dollars in this case, but the long bankruptcy battle is finally over."

Grupo, owned by Mexican billionaire German Larrea Mota Velasco, paid \$1.2 billion for Asarco in a hostile takeover a decade ago. But as a result of the bankruptcy, Grupo lost control of the company, while the acrimonious relations with labor and environmental regulators got worse.

Moore's representation of Grupo began a year ago when former Milbank bankruptcy partner Luc Despains left the firm for Paul, Hastings, Janofsky & Walker.

"I got a call on a Saturday morning from Luc telling me that he was leaving, and later that day I parachuted into this thing," says Moore.

For its part, Asarco hired Baker Botts in March 2004 to pursue a prepackaged bankruptcy for its subsidiaries. After Grupo lost control of the company, the firm was left to answer to Asarco's newly independent directors.

Fast forward to March 2008 when Indian mining company Sterlite Industries won a bankruptcy auction for Asarco with a \$2.6 billion cash bid. But before long the global economic downturn intervened and scuttled Sterlite's acquisition plans.

Then, last April, Baker Botts scored a big win for Asarco in a trial in Brownsville when Grupo was held liable for nearly \$8 billion in damages for wrongly selling off a former Asarco subsidiary. The judgment gave Grupo motivation to close on a deal for its former subsidiary. (Grupo was incented to reassume control of Asarco so it could pay off creditors and owe the remaining balance to itself, rather than owe the judgment to another company that might swoop in and buy Asarco.)

Several new bids for Asarco followed. Sterlite also tried to revive its offer, which was backed by the Justice Department and 11 states with environmental claims, Asarco's unsecured creditors' committee, and most bondholders. Grupo stood alone.

The competing Sterlite and Grupo confirmation plans proceeded to a three-week trial. The district court found that both plans were confirmable because they would pay creditors in full—about \$3.9 billion, with Grupo kicking in \$2.2 billion and Asarco picking up the rest.

In Hanen's 141-page ruling the district judge found that the auction process for Asarco meant that both companies could bid and reach confirmable plans, but sided with Grupo based on the superiority of its offer to creditors and equity holders.

"In many ways, the course of this bankruptcy has been a contentious and hard-fought piece of litigation," Hanen wrote in his decision. "In other ways, this proceeding can be labeled as one of the most successful bankruptcy proceedings in recent history."

The ruling means that Grupo will once again control Asarco free from the threat of costly environmental and asbestos litigation. (The matter was before the district court because of disagreements related to Asarco's asbestos liabilities.)



Robert Jay Moore

With Asarco again part of Grupo, Moore says the company's only indebtedness will be a \$280 million one-year note to a trust for asbestos creditors. And with the close of the Asarco deal, Moore says Grupo is in the process of funding nearly \$700 million in cash to the same trust.

Michael Fitzgerald, chairman of Milbank's global securities group and Latin American practice, led a team from the firm advising Grupo Mexico on the financing side of the Asarco deal. Moore handled the bankruptcy case, confirmation battle, and the looming transition and closing of the current plan. Litigation partner Gregory Evans headed up contingent and environmental asbestos claims. Haynes and Boone bankruptcy partner Charles Beckham, Jr., and litigation partner Brian Antweil served as Grupo's local counsel.

Moore declined to comment on whether Milbank broke the \$100 million billable barrier during the four-year battle—Asarco's bankruptcy and litigation counsel at Baker Botts reached that point in August—but acknowledges that the professional fees in the case were steep.

"The fees incurred by all of the bankruptcy estate's professionals, including Baker Botts, probably exceeded \$200 million," Moore says.

That's not taking into account the fees incurred by bondholders and the United Steelworkers, a member of Asarco's creditors' committee that remains opposed to Grupo taking control of the company. (Reed Smith's Paul Singer represented Asarco's creditors;

court records show that the firm billed for \$15.8 million in fees and expenses in the bankruptcy case.)

Milbank has filed a labor advisory report with the district court on behalf of Grupo stating that the once estranged parent will assume the union's existing contract. Hanen has ordered Grupo to make a contract proposal to the union by January 15.

Some other lawyers snagging lead roles: Cleary Gottlieb Steen & Hamilton Nicolas Grabar and Sean O'Neal represented a bank syndicate financing Grupo's reorganization for Asarco. Sander Esserman, a name partner with Stutzman, Bromberg, Esserman & Plifka in Dallas, represented Asarco's asbestos committee.

The bankruptcy court also appointed former Corpus Christi judge Robert Pate to serve as future claims representative for prospective plaintiffs that hadn't yet asserted claims for asbestos-related diseases. And Alan Tenenbaum, an internal bankruptcy lawyer at the Justice Department, handled government aspects of Asarco's asbestos liabilities.

Baker Botts bankruptcy partner Jack Kinzie advised Asarco throughout its long ordeal. With Sterlite unlikely to appeal—a Shearman lawyer for the company declined to comment—this time the end is likely for real.

But Kinzie doesn't expect his firm to remain employed by the copper miner with Grupo in control.

"I wouldn't expect us to continue this engagement," he deadpans. "I think there's a little history there."

Reprinted with permission from the AMLAW DAILY featured on December 10, 2009. © 2009 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382, reprints@alm.com or visit www.almreprints.com. # 002-12-09-05

Robert Jay Moore is a partner in the Financial Restructuring Practice of Milbank, Tweed, Hadley & McCloy. He may be contacted at (213) 892-4501 or rmoore@milbank.com.

Michael L. Fitzgerald is the chairman of the Global Securities Group, the Global Corporate Group and the Latin America Practice Group of Milbank, Tweed, Hadley & McCloy. He may be contacted at (212) 530-5224 or mfitzgerald@milbank.com.

Gregory Hinojosa Evans is a partner in the Litigation Department of Milbank, Tweed, Hadley & McCloy. He may be contacted at (213) 892-4488 or gevens@milbank.com.

**Milbank, Tweed, Hadley & McCloy LLP** is a leading international law firm that has been providing innovative legal solutions to clients worldwide for more than 140 years. Headquartered in New York, the Firm operates out of 10 offices in the U.S., Europe and Asia. Milbank provides a full and integrated range of legal services to the world's leading commercial, financial and industrial enterprises, as well as to institutions, individuals and governments.

## Milbank