

Grupo Mexico And Asarco

The Record Speaks for Itself



A Report by the United Steelworkers
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This report will address the potential impact on the long-term viability of ASARCO – America’s third largest copper producer – and on U.S. communities, workers and the environment, if Mexican conglomerate Grupo Mexico were to regain control of ASARCO from its independent Board of Directors.

Grupo Mexico and ASARCO

ASARCO is a fully-integrated producer of copper, headquartered in Tucson, Arizona, with operations in Arizona and Texas. The company has over 2,000 employees. ASARCO also owns a number of properties throughout the US that are no longer active, but that have ongoing environmental liabilities.

The Company was established in 1899 as the American Smelting and Refining Company. It once operated mines and mills in numerous locations throughout the United States, Mexico, Canada, Australia and Peru.

After 100 years as an independent company, ASARCO was purchased in 1999 by the affiliated U.S. entities of Mexican conglomerate, Grupo Mexico. Grupo Mexico is the sole shareholder of Americas Mining Corporation, which is the sole shareholder of ASARCO.

On August 10, 2005, while under Grupo Mexico control, ASARCO filed a petition to enter Chapter 11 bankruptcy where it remains today. In December 2005, shortly after the bankruptcy filing, control of ASARCO was taken away from Grupo Mexico and placed in the hands of an independent board of directors.

The extent of ASARCO’s significant environmental liabilities was capable of being analyzed when Grupo Mexico purchased the company in 1999. Now, these liabilities are among those that could be settled for less than full value as part of the bankruptcy proceedings. While it is true that in bankruptcy cases creditors often receive something less than they are owed, it cannot be ignored that in this case, the creditors that would be harmed by the compromise of the environmental obligations are the taxpayers of the United States.

Grupo Mexico has attempted, unsuccessfully to date, to retake control of ASARCO during the bankruptcy process. In addition, Grupo Mexico has indicated that it will try to regain control of ASARCO when it exits bankruptcy. We believe that the record demonstrates that during the period of time that Grupo Mexico was in control of ASARCO, it consistently acted in the derogation of ASARCO’s other stakeholders: its vendors, employees, retirees and the communities where ASARCO has continuing and former operations.

Grupo Mexico's past business practices both at ASARCO facilities and elsewhere suggest that it would not be a responsible steward for a reorganized ASARCO. Grupo's track record, as described in the various lawsuits brought against it or affiliates, as well as in independent media reports, includes:

- allegations that Grupo Mexico stripped ASARCO of its most valuable assets, leaving the company insolvent and unable to pay millions in asbestos and environmental liabilities;
- disregard for the health and safety of its employees and their communities;
- a poor environmental record; and
- poor employee relations.

Based on this record, there is good reason to believe that Grupo Mexico's resumption of control of ASARCO would be detrimental to the interests of U.S. workers and communities, that it would erode employee morale and job security, and jeopardize ASARCO's ability to meet its environmental obligations.

Grupo Mexico's Acquisition of ASARCO¹

Grupo Mexico acquired ASARCO through a leveraged buyout in November 1999. The structure of the transaction imposed a significant level of debt upon ASARCO. Critically, the structure of the Grupo Mexico acquisition and the subsequent business decisions described below left ASARCO without sufficient capital to operate its business.

Immediately following the acquisition, Grupo Mexico replaced ASARCO's Board of Directors and senior management with Grupo Mexico insiders. A short time after the purchase, Grupo Mexico sold ASARCO subsidiaries OMI/Enthone and American Limestone and used the proceeds to pay down acquisition debt that Grupo Mexico had guaranteed. Because these subsidiaries were in unrelated industries, they had provided a stabilizing affect on ASARCO's revenues during period of low metals prices. Without them, the company struggled to maintain sufficient cash flow, further exacerbating the debt-service shortfall.

¹ The events and management decisions taking place during the time between Grupo Mexico's acquisition of ASARCO and ASARCO's entry into bankruptcy, including the transfer of the Southern Peru Copper shares, have been and are currently the subject of extensive litigation and are widely described in these various proceedings. The details contained in this section, unless otherwise noted (including from press reports), have been extracted from court documents from *ASARCO LLC v. Americas Mining Corp*, Case No. 05-21207, United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division, *ASARCO LLC's Complaint to Avoid and Recover Fraudulent Transfer*, filed February 2, 2007, Docket No. 3697.

Grupo Mexico's Record as Owner of ASARCO

Deprived of the cash flow needed to pay its debt as it came due, ASARCO was forced to sell more assets, including valuable real estate and essential and hard to replace assets, like haul trucks and conveyor equipment vital for a mining company's operations. In 2002, ASARCO auctioned off millions of dollars of assets ranging from hard hats and spare parts to cranes and loaders.² According to press reports, the cash generated in this auction did not reflect the value of the items sold.³ In 2003, it was reported that ASARCO's Ray Mine was operating at reduced levels because it literally did not have fuel to run its production trucks.⁴ The company sold assets necessary to carry on its business for less than their value in order to service the excessive debt load imposed by the leveraged buy-out.

While ASARCO was struggling due to its debt and low cash flow, Grupo Mexico claimed it was entitled to a \$40.5 million refund of tax overpayments made by ASARCO. However, in March 2007, the Bankruptcy Court awarded the refund to ASARCO.⁵

In July 2005, under Grupo Mexico's direction, ASARCO sold a concentrator mill at its Mission mine which had been idled in 2002 due to low copper prices. However, since ASARCO has come under independent control, ASARCO blocked the removal of the Mission concentrator and won the right to reacquire the mill, successfully claiming that Grupo Mexico had not obtained a fair price and that the mill was critical to ASARCO's efforts to expand production.⁶

ASARCO has also charged that Grupo Mexico failed to act to prevent the transfer of ASARCO's interest in its partnership in a copper mine in Butte, Montana when ASARCO could not afford to make its share of clean-up payments. ASARCO had obtained a 49% interest in the partnership in 1989 for \$100 million.

² In addition, according to the Southern Peru Copper Corporation Form 10-K for the year ending December 31, 2002, "in 2001, the Company purchased from ASARCO ten used 200-ton Le Torneau haulage trucks for the Toquepala mine for a total purchase price of \$5.2 million, including spare parts. ... The purchase price of the trucks did not differ materially from ASARCO's book value at the time of the purchase." According to the Southern Peru Copper Corporation Form 10-K for the year ending December 31, 2003, in 2003, the Company purchased from ASARCO used mining equipment for \$6.3 million and exploration properties in Chile for \$3.7 million.

³ El Paso Times, "Bidding Begins in Asarco Auction," July 11, 2002.

⁴ Arizona Daily Star, "Why Asarco is Running on Empty," February 2, 2003

⁵ American Metal Market, "Asarco Wins Court Fight Over \$40.5M Tax Refund," March 1, 2007. Arizona Daily Star, "Asarco: No Parent Company Refund," February 13, 2007.

⁶ American Metal Market, "Asarco Takes Legal Action Over Purchase of Arizona Mill," September 26, 2006. American Metal Market, "Court Backs Asarco Request to Stop Removal of Arizona Mill," November 13, 2006. American Metal Market, "Asarco Gets Court OK to Buy Back Missions South Mill for \$9 Million," March 2, 2007.

ASARCO now claims that the interest was worth hundreds of millions of dollars.⁷

While ASARCO's various asset sales provided cash needed to service its debt and continue operations, court documents and press reports allege that the sales were often for less than fair value. Further, when copper prices recovered, ASARCO was unable to replace critical equipment and resume full production.⁸

During this same period, under Grupo Mexico's direction, ASARCO also liquidated a number of environmental and asbestos insurance policies in order to raise needed cash. According to court documents, these policies were settled for less than their actual value, and in some cases, the company negotiated discounted payments in order to receive the settlements more quickly. A large portion of the cash generated by these settlements was used to fund operations and not to settle claims or protect the firm from future claims.⁹ The decision to sell these policies was made without apparent consideration of ASARCO's long term viability or its environmental and asbestos claimants.

Despite ASARCO's cash flow struggles, Grupo Mexico forced it to redeem \$50 million of bonds held by Grupo Mexico and its affiliates. In March of 2003, Grupo Mexico forced ASARCO to pay its outstanding Yankee Bonds¹⁰ with interest, despite advice to the contrary by its restructuring committee and the resistance of two independent board members.¹¹

Grupo Mexico's actions in each of these instances raise doubts about its commitment to ASARCO, the long term viability of its operations and its stakeholders.

⁷ American Metal Market, "Asarco Sues Over Transfer of Its Interest in Montana Mine," April 10, 2007.

⁸ Arizona Daily Star, "Asarco Set on Recovery," July 18, 2004.

⁹ *ASARCO LLC v. Americas Mining Corp*, Case No. 05-21207, United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division, ASARCO LLC's Complaint to Avoid and Recover Fraudulent Transfer, filed February 2, 2007, Docket No. 3697.

¹⁰ Yankee Bonds are dollar denominated bonds issued in the U.S. by foreign corporations, banks and governments.

¹¹ According to claims in *ASARCO LLC v. Americas Mining Corp*, Case No. 05-21207, United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division, Carlos Slim Helu, the owner of Grupo Financiero Inbursa, held the majority of these bonds. It was revealed by Genaro Larrea, then president of ASARCO, that Inbursa was the bank that was to provide financing for Grupo Mexico's proposed Southern Peru Copper transaction and was requiring that ASARCO pay the bonds as a condition to the financing.

Sale of Southern Peru Copper¹²

It would appear that Grupo Mexico's main interest in ASARCO was to gain control of ASARCO's 54% stake in the very profitable Southern Peru Copper Corporation. Grupo Mexico hired a number of well-respected, independent firms to assess the value of ASARCO's stake in Southern Peru Copper. These assessments valued the stake at between \$720 million in September 2000 and \$1.2 billion in June 2002. Pointing to ASARCO's significant cash flow difficulties, the company's two independent directors, along with outside financial and legal advisors, recommended that ASARCO expose the shares of Southern Peru Copper to the market for cash bids or enter into bankruptcy protection with Southern Peru Copper as collateral for debtor-in-possession financing.

Despite this advice, Grupo Mexico continued with the plan to transfer the shares to ASARCO's parent, another wholly owned Grupo Mexico subsidiary, Americas Mining Corporation.

The shares of Southern Peru Copper were transferred to Americas Mining Corporation in March 2003 under the following terms: \$450 million to retire a credit facility guaranteed by Grupo Mexico as part of the 1999 leveraged buyout, \$100 million to fund an environmental trust, \$42 million to forgive inter-company debt, \$50 million to be used to retire the Yankee Bonds, and a \$123 million note to be paid over seven years. While the nominal value of the sale was \$765 million, ASARCO did not receive any funds to support continuing operations. The trust fund for the environmental claims covered a small fraction of the estimated liabilities.

Once the transfer was complete, all of the Grupo Mexico insiders on the ASARCO board who had approved the transfer resigned. ASARCO remained afloat for two more years, but even rising copper prices were not enough to keep the company out of bankruptcy.

Environmental Record

The claims for environmental remediation associated with sites at which ASARCO has been named a responsible or potentially responsible party will be resolved by the bankruptcy court.

¹² The details of the transfer of Southern Peru Copper Corp described in this section were taken from *ASARCO LLC v. Americas Mining Corp*, Case No. 05-21207, United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division, *ASARCO LLC's Complaint to Avoid and Recover Fraudulent Transfer*, filed February 2, 2007, Docket No. 3697.

However, the environmental remediation and ongoing compliance costs at the operating locations and certain other non-operating locations will not be discharged in bankruptcy. Those obligations will be the responsibility of the entity which controls ASARCO when it exits bankruptcy. Thus, future clean up and remediation in Arizona and Texas, as well as potentially numerous other non-operating sites, will depend on the financial strength of the buyer and future success of the enterprise. As a result, the selection of the purchaser of ASARCO is a critical issue for the workers and communities at their operating mines and mills, the communities around the non-operating sites and for U.S. taxpayers.

Grupo Mexico's past record raises questions as to whether an ASARCO under its control will make good on these claims. Grupo Mexico's poor environmental stewardship in its operations outside of the United States raises additional questions as well.

Labor Relations

Grupo Mexico has demonstrated its hostility towards its U.S. employees and their communities in other ways as well. In July 2003, under Grupo Mexico's direction, ASARCO unilaterally cut the healthcare benefits for hundreds of ASARCO's retirees. The changes imposed by the company caused substantial hardships for many retirees who had given the company long and loyal service.

The period in which Grupo Mexico controlled ASARCO's labor relations was marked by nearly constant strife. On July 1, 2004, contracts expired covering 750 hourly employees at the ASARCO Copper Group when the company and the unions representing its employees were unable to reach new labor agreements.¹³

Despite rising copper prices, Grupo Mexico demanded substantial cuts in wages and benefits. Employees at the ASARCO Copper Group worked for a full year without new agreements. The National Labor Relations Board (NLRB) alleged in a formal administrative complaint in March 2005 that the Company failed to provide the Unions with information necessary to bargain, in violation of U.S. labor law. ASARCO subsequently settled the case before it went to trial.

ASARCO, under the direction of Grupo Mexico, continued its demands that the Unions agree to harsh concessions in negotiations for new contracts covering its Ray Mines Unit. During the period leading up to the contract expiration on July 1, 2005, Company supervisors repeatedly threatened Union-represented workers for exercising their rights under U.S. labor law.

¹³ The ASARCO Copper Group includes company's facilities in Amarillo, Texas, Hayden, Arizona; Sahuarita, Arizona (Mission mine); and Marana, Arizona (Silver Bell mine).

In protest against these unfair labor practices, the 1,500 hourly employees at the ASARCO Copper Group and Ray Unit went on strike and continued the strike for over four months, despite the Company's use of replacement workers.¹⁴ On October 3, 2005, the NLRB charged in a formal administrative complaint that the Company had committed numerous violations of U.S. labor law and that the labor dispute was a legally-protected unfair labor practice strike.¹⁵

The Company's hostilities were not limited to its striking employees. In August 2005, Grupo Mexico through ASARCO halted disability benefits for over 100 current and former employees, threatening their eligibility for continued health care benefits.¹⁶

Only after C.E.O. Daniel Tellechea resigned and other constituencies in the bankruptcy case intervened was the strike settled and management able to reach new one-year labor agreements with the unions representing its employees.

ASARCO's relationship with its employees' unions has improved dramatically once the company was finally free of the influence and domination of Grupo Mexico.¹⁷ Indeed, in January 2007, management and the unions negotiated a new long-term labor agreement that provided ASARCO with productivity gains and greater operating flexibility. The labor agreement was supported by the creditors committee and other constituencies and approved by the Bankruptcy Court, with the sole objector being Grupo Mexico.¹⁸

Grupo Mexico at Home

Grupo Mexico's conduct in its home country is particularly shocking. In February 2006, an explosion occurred at a Grupo Mexico mine in the Mexican state of Coahuila. Sixty-five miners were trapped in the mine, but rescue efforts were halted after only six days. An independent panel concluded that the explosion was the result of company negligence. According to a report by the National Human Rights Commission, an autonomous government commission, the mine had a number of safety deficiencies that were known by the

¹⁴ Plaintiffs in the asbestos lawsuits against ASARCO charged that Grupo Mexico prolonged the strike to allow Southern Peru Copper to steal customers from ASARCO. The Herald – Everett, Wash. "Lawyers dissect ASARCO's cleanup obligation in U.S.," March 20, 2006.

¹⁵ United Steelworkers, News Release, "Fight for Fairness Continues on Picket Lines, at Bargaining Table," October 3, 2005.

¹⁶ Arizona Daily Star "Asarco Halts Disability Pay to Pensioners," September 21, 2005. Arizona Daily Star, "Asarco Resumes Disability Payments," October 26, 2005.

¹⁷ Arizona Daily Star, "Asarco Parent Losing Control," June 4, 2006

¹⁸ American Metal Market, "USW Slams Grupo Mexico Move to Block Asarco Deal," February 21, 2007. American Metal Market, "Bankruptcy Court OKs Asarco Labor Accord," March 16, 2007.

government and the company.¹⁹ Negligent homicide charges were filed by a special prosecutor against Industrial Minera Mexico, the subsidiary of Grupo Mexico that operates the mine.²⁰

At the copper mine and processing plants in Cananea, an independent group called the Maquiladora Health & Safety Support Network (MHSSN) issued a report calling working conditions in Cananea a “clear and present danger to the health and safety” of the workers.²¹ According to this report a recent study by the Mexican Labor Department (STPS) listed seventy-two corrective actions that Grupo Mexico needed to take to address serious safety and health related hazards. The MHSSN report cited workers being exposed to ten times the lawful limit of crystalline silica, high levels of sulfuric acid mists, serious electrical and mechanical hazards, and inadequate training and medical monitoring.

Because of these documented conditions and Grupo Mexico’s lack of effort to improve them, employees at the mine went on strike to protest the terrible working conditions and health hazards. Grupo Mexico responded, not by addressing these concerns, but by calling in nearly 1,000 federal police and soldiers, who used tear gas and pellet guns to break up a worker blockade and reopen the mine. The courts have ruled the strike to be legal, but the police remain there today.²²

The ASARCO Bankruptcy Proceedings

ASARCO is currently conducting a process to identify an investor that would take control of ASARCO and allow it to exit bankruptcy in the near future. Grupo Mexico has indicated that it wishes to regain control of ASARCO as part of the bankruptcy process. The outcome of the reorganization process will have dramatic impact on ASARCO’s most significant stakeholders – its employees and the taxpayers of the United States, who are by far the company’s largest creditors. Any reorganization plan must promote both sustainable employment and a credible plan for addressing ASARCO’s environmental legacy.

Against this yardstick, and based on its record since 1999, Grupo Mexico has proven itself to be a wholly unsuitable steward for ASARCO and to date has done nothing to suggest that this would change if it were to regain control.

¹⁹ Mexican Human Rights Commission Report on the Tragedy at Grupo Mexico owned Pasta de Conchos Mine. <http://www.cndh.org.mx/recomen/2006/026.htm>

²⁰ <http://www.mysanantonio.com>, “Families of Victims of Coal Mine Blast to March Today,” February 19, 2008.

²¹ Workplace Health and Safety Survey And Medical Screening of Miners At Grupo Mexico’s Copper Mine Cananea, Sonora, Mexico October 5-8, 2007 available at <http://mhssn.igc.org/CananeaOHSReport.pdf>

²² American Metal Market, “Cananea Labor Talks Deadlocked,” February 27, 2008

The United Steelworkers will meet the letter and spirit of all of its legal obligations, but we are concerned – and the U.S. government and other stakeholders should be concerned as well – that based on the record, if Grupo Mexico regains control of ASARCO it will not be long before the Company once again shows its disregard for workers, their communities, and the environment.