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United States Bankruptcy Court,
S.D. Texas,
Corpus Christi Division.
In re ASARCO, LLC et al., Debtors.
No. 05-21207.

July 20, 2011.

MEMORANDUM OPINION WITH RESPECT TO:

- (1) FINAL APPLICATION OF OPPENHEIMER, BLEND, HARRISON & TATE, INC. FOR AN ORDER GRANTING FULL AND FINAL ALLOWANCE OF PAYMENT FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES, AS ATTORNEYS FOR THE FUTURE CLAIMS REPRESENTATIVE IN CONNECTION WITH THE SUBSIDIARY DEBTORS, ASARCO, LLC, AND THE ADDITIONAL DEBTORS FOR THE PERIOD FROM APRIL 11, 2005, THROUGH DECEMBER 9, 2009;**
- (2) FINAL APPLICATION OF ROBERT C. PATE FOR AN ORDER GRANTING FINAL APPROVAL AND ALLOWANCE OF FEES AND REIMBURSEMENT OF EXPENSES INCURRED AS THE FUTURE CLAIMS REPRESENTATIVE FOR THE SUBSIDIARY DEBTORS, ASARCO, LLC, AND THE ADDITIONAL DEBTORS FOR THE PERIOD FROM APRIL 11, 2005, THROUGH DECEMBER 9, 2009;**
- (3) JOINT APPLICATION OF ROBERT C. PATE, FUTURE CLAIMS REPRESENTATIVE AND OPPENHEIMER, BLEND, HARRISON & TATE, INC., AS COUNSEL TO THE FUTURE CLAIMS REPRESENTATIVE FOR ORDER AWARDING AN ENHANCEMENT OF TWENTY-FIVE PERCENT (25%) OF THEIR FEES; AND**
- (4) ALL SUPPLEMENTS THERETO**

[RICHARD S. SCHMIDT](#), Bankruptcy Judge.

*1 On this day came on for consideration the (1) *Final Fee Application of Oppenheimer, Blend, Harrison & Tate, Inc. for an Order Granting Full and Final Allowance of Payment for Compensation and Reimbursement of Expenses, as Attorneys for the FCR in Connection with the Subsidiary Debtors, Asarco LLC, and the Additional Debtors* [Docket No. 13883] (the "*OBHT Final Fee Application* ") for the period from April 11, **2005** through December 9, **2009** (the "*Application Period* "), in the above-styled, jointly-administered Chapter 11 reorganization cases (the "*Chapter 11 Cases* "); (2) the *Application of Robert C. Pate, Future Claims Representative for an Order Granting Final Approval and Allowance of Fees and Reimbursement of Expenses Incurred as the Future Claims Representative for the Subsidiary Debtors, ASARCO, LLC, and the Additional Debtors* [Docket No. 13877] (the "*FCR Final Fee Application* "); (3) the *Joint Application of Robert C. Pate, Future Claims Representative and Oppenheimer, Blend, Harrison & Tate, Inc., as Counsel to the Future Claims Representative for Order Awarding an Enhancement of Twenty-Five Percent (25%) of Their Fees* [Docket No. 13886] (the "*Enhancement Application* "); and all supplements thereto filed by both the FCR and OBHT (collectively with the FCR Final Fee Application, the OBHT Final Fee Application and the Enhancement Application, the "*Applications* "). The court, having heard the evidence and arguments of counsel, makes the following Findings of Fact and Conclusions of Law.

I. Introduction

1. Robert C. Pate, the legal representative of future asbestos-related claimants ("*Judge Pate* " or the "*FCR* "), and his counsel, Oppenheimer, Blend, Harrison & Tate, Inc. ("*OBHT* ") performed superior services in these Chapter 11 Cases that produced exceptional results. Commencing in the Summer of **2005**, with the realistic prospect that their constituents would not recover anything on their claims, the FCR and OBHT, together with the committee appointed to represent current asbestos claimants and its counsel, successfully prosecuted a complex alter ego lawsuit on behalf of the Subsidiary Debtors [\[FN1\]](#) against its parent, ASARCO LLC ("*ASARCO* "), which resulted in a \$1 billion allowed claim and a cash recovery on such claim of more than \$940 million for the Subsidiary Debtors' estates--estates that had no operations, no cash flow, and no meaningful assets other than contingent insurance proceeds. The FCR and OBHT were handicapped at every turn, not the least by their complete lack of institutional knowledge of the decades-long relationship of these affiliated entities. Essentially, they were handed the keys to a warehouse graveyard of tens of thousands of dusty, disorganized boxes and challenged to make a case.

[\[FN1\]](#). The "*Subsidiary Debtors* " or "*Asbestos Subsidiaries* " consist of the following five entities: Lac d'Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.); Lake Asbestos of Quebec, Ltd.; LAQ

Canada, Ltd.; CAPCO Pipe Company, Inc. (f/k/a Cement Asbestos Products Company); and Cement Asbestos Products Company.

2. The FCR and OBHT along with counsel for the Asbestos Committee became the only fiduciary constituents who also negotiated a plan-sponsor agreement with ASARCO's parent companies, ASARCO Incorporated ("*ASARCO Inc.*") and Americas Mining Corporation ("*AMC*," together with ASARCO Inc., the "*Parent*"). This agreement helped produce a bidding war at the very point in these Chapter 11 Cases when the flagging economy and deal-fatigued parties threatened to undermine all the progress the Debtors had theretofore made. The end result was a confirmed plan that paid all allowed claims of all creditors in full with interest.

*2 3. On February 8, **2010**, the FCR and OBHT filed applications for final allowance and approval of their fees and expenses and an upward adjustment of their standard hourly rates. On March 10, **2010**, Reorganized ASARCO LLC ("*Reorganized ASARCO*") (now controlled by the Parent), filed objections to the FCR's and OBHT's final fee and enhancement applications. Reorganized ASARCO and the Parent also asserted objections (collectively, the "*Objections*") against the final fee and enhancement applications of other Court-appointed professionals as well as the FCR and OBHT (collectively, the "*Applications*"), and the Court received testimony, documentary evidence and argument concerning the Applications and Objections in hearings conducted in tranches on non-consecutive days in June **2010** (the "*Fee Hearings*"). The evidence introduced in each of the various Fee Hearings was cumulative. The hearing on the FCR's and OBHT's Applications were held June 15 through 17, **2010**. Because the Court must consider the entire course of these cases to dispose of the Applications, the Court took judicial notice and incorporated the entire record of these cases (and their spawn of adversary proceedings) since their commencement.

4. The Applications and Objections are subject to the Court's core jurisdiction pursuant to [28 U.S.C. §§ 1334](#) and [157\(b\)\(2\)](#). This memorandum opinion comprises the Court's findings of fact and conclusions of law and order respecting the Applications and Objections.

II. Retention of FCR and His Counsel

A. Terms of Appointment and Employment.

5. On March 23, **2005**, the Asbestos Subsidiaries and Robert C. Pate executed a pre-petition engagement letter retaining Judge Pate as the FCR in conjunction with an anticipated prepackaged chapter 11 that the Asbestos Subsidiaries were considering (the "*Pre-Petition Engagement Letter*"). Judge Pate engaged OBHT to serve as his counsel in performing these services.

6. At the time that Judge Pate and OBHT were engaged, and throughout the duration of these Chapter 11 Cases, the Asbestos Subsidiaries were non-operating entities whose assets consisted primarily of

insurance coverage for asbestos claims. Other than contingent insurance proceeds, the Asbestos Subsidiaries had no other assets and no operations or cash flow to pay professionals. Accordingly, in order to retain the services of the Asbestos Fiduciary, ASARCO (not yet in Chapter 11) unconditionally guaranteed payment of their fees and expenses and provided the Asbestos Fiduciary with retainers of \$50,000.00 each to secure their engagements.

7. On April 11, **2005**, the Asbestos Subsidiaries filed voluntary petitions in this Court (the "*Subsidiary Cases*") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Thereafter, the Asbestos Subsidiaries filed a motion to appoint Judge Pate as the FCR in the Subsidiary Cases, which was granted by this Court on April 19, **2005**. The FCR then filed an application to employ OBHT as his counsel (the "*Application to Employ OBHT in the Subsidiary Cases*"), which was also approved by the Court "on the terms and conditions as set forth in the Application." In neither application did the FCR or OBHT agree to cap its compensation according to the standard hour rates charged for services performed. In the Application to employ the FCR, paragraph 21(c), Judge Pate indicated his acceptance of the engagement was conditioned on being compensated "consistent with treatment afforded other professionals in these cases pursuant to applicable provisions of the Bankruptcy Code ..." OBHT did not agree to cap its compensation according to the standard hour rates charged by its attorneys. In the Application to Employ OBHT in the Subsidiary Cases, OBHT indicated that its acceptance of the engagement was conditioned on its being compensated "at the normal hourly rates for its attorneys, paralegals, and law clerks, and on the basis of other factors normally considered by the Bankruptcy Code in determining fees." Application to Employ OBHT in Subsidiary Cases at ¶ 8. The Bankruptcy Code provides for payment of reasonable compensation to Court-approved professionals as adjusted upward or downward at the discretion of the Bankruptcy Court pursuant to the directives of the statute. [11 U.S.C. § 330\(a\)\(3\)](#).

*3 8. On August 9, **2005**, ASARCO filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*ASARCO Case*"). Subsequently, additional ASARCO Subsidiaries (the "*Additional Debtors*") filed voluntary petitions in this Court (the "*Additional Debtors Cases*," together with the ASARCO Case, the "*ASARCO Cases*").

9. From the FCR's initial appointment in the Subsidiary Cases on April 19, **2005**, through August 15, **2008**, the FCR and OBHT served as case professionals only in the Subsidiary Cases. In order to facilitate the Debtors' Second Amended Joint Plan of Reorganization and on the Debtors' motions, the Court appointed Judge Pate as the FCR in the ASARCO Case and the Additional Debtors Cases, on August 15, **2008**, and August 26, **2008**, respectively. On September 2, **2008**, the FCR filed an application to retain OBHT as his counsel (the "*Application to Employ OBHT in the ASARCO Cases*") As in the Subsidiary Cases in its Application to Employ both the FCR and OBHT in the Asarco cases, neither the FCR nor OBHT agreed to limit compensation to the standard hourly rates charged for services performed. In the ASARCO application to employ the FCR, paragraph 26(c), Judge Pate indicated his acceptance of the

engagement was conditioned on being compensated "consistent with treatment afforded other professionals in these cases pursuant to applicable provisions of the Bankruptcy Code ..." OBHT stated that its acceptance of the engagement was conditioned on its being compensated "at the normal hourly rates for its attorneys, paralegals, and law clerks, and on the basis of other factors normally considered by the Bankruptcy Code in determining fees." Application to Employ OBHT in the ASARCO Cases at ¶ 8. On September 16, **2008**, the Court entered an order approving OBHT's employment "on the terms and conditions as set forth and stated in the Application."

B. The FCR and His Counsel Were Employed to Fulfill Broad Roles.

10. Judge Pate was appointed to represent the interests of all persons who might subsequently assert "demands" as that term is defined in [Section 524\(g\) of the Bankruptcy Code](#) (the "*Future Claimants* "). The primary role of a representative of future claimants in asbestos bankruptcy cases is that of a plan negotiator. *See* S. Elizabeth Gibson, *Judicial Management of Mass Tort Bankruptcy Cases* (Federal Judicial Center, **2005**) at p. 68. These Chapter 11 Cases were no different. From the time of their pre-petition engagement by the Asbestos Subsidiaries, it was contemplated that the FCR and OBHT would become involved in the assessment of the collective Debtors' assets and liabilities in order to maximize any potential recovery for the Future Claimants from a common fund to be shared by all creditors pursuant to a "pot" plan. As described in his Pre-Petition Engagement Letter, it was necessary for the FCR to familiarize himself with all aspects of all Debtors, including "the insurance, business affairs, assets and liabilities of Asarco and its affiliates." Accordingly, the orders employing OBHT authorized and ordered OBHT to provide a broad range of services to assist the FCR:

- *4 (a) to give the Future Claims Representative legal advice with respect to his duties and obligations in this case;
- (b) to prepare on behalf of the Future Claims Representative necessary applications, notices, answers, adversaries, orders, reports and other legal papers;
- (c) to advise the Future Claims Representative concerning the administration of the case;
- (d) to assist the Future Claims Representative in his investigation of the acts, conduct, assets, liabilities, and financial condition of the Debtors' business, and any other matter relevant to the formulation of a Plan;
- (e) to participate with the Future Claims Representative in the negotiation and formulation of a Plan;
- (f) to provide advice and assistance regarding the tax, trust, litigation, and other non-bankruptcy law aspects that may be required in the performance of the duties of the Future Claims Representative; and
- (g) to perform such other legal services for the Future Claims Representative as may be requested and which may be necessary and appropriate in this Chapter 11 Case.

11. An Official Committee of Unsecured Creditors was also appointed in the Subsidiary Cases (the "*Subsidiary Committee* "). Contemporaneously with Judge Pate's appointment as FCR in the ASARCO Case and Additional Debtors Cases, the members of the Subsidiary Committee were appointed to

represent current asbestos victims in the ASARCO Case and Additional Debtors Cases (the "*Asbestos Committee* ") and retained Stutzman, Bromberg, Esserman and Plifka, PC ("*SBEP* ") as their counsel, SBEP together with the FCR and OBHT are herein sometimes collectively referred to as the "*Asbestos Fiduciaries*." The FCR and OBHT coordinated work on mutually beneficial or necessary projects with SBEP throughout these Chapter 11 Cases in order to avoid unnecessary duplication of services.

III. The FCR and OBHT Performed Superior Services that Caused a Rare and Exceptional Outcome for their Constituents, for the Asbestos Subsidiaries' Estates, and for All Creditors in these Chapter 11 Cases

12. When the FCR and OBHT were retained in the Subsidiary Cases, they undertook their fiduciary obligations to the Future Claimants for estates that had no operations or cash flow, whose primary assets were contingent insurance proceeds, but were exposed to asbestos claims, which combined with future asbestos claims totaled to more than a \$1 billion dollars of liability. Shortly after the retention orders were entered, instead of a "pre-packaged Chapter 11" being prepared, the FCR was sued in an adversary proceeding filed by ASARCO seeking a declaration that ASARCO had no liability to the Subsidiary Debtors' or their asbestos victims. ASARCO had steadfastly denied any derivative liability to the Asbestos Subsidiaries victims for decades. That the FCR and OBHT were able to successfully prosecute the derivative asbestos claims and obtain an allowed claim of \$1 billion against ASARCO's Chapter 11 estate with substantially full payment at the conclusion of these Chapter 11 Cases is an extraordinarily rare and exceptional outcome resulting directly from the superior performances by the FCR, OBHT, and the other Asbestos Fiduciaries. The Asbestos Fiduciaries, individually and as a group were the sole producing cause of this outcome, without which the Subsidiary Debtors would have had no means to provide any remuneration to the more than 100,000 asbestos victims that had filed claims in the Subsidiary Cases as well as the FCR's constituencies, the future demand holders.

*5 13. The details and history of the ASARCO bankruptcy are chronicled in the Court's Recommendation to the District Court on Plan Confirmation and in this Court's Memorandum Opinion approving the Fee Application of Baker Botts. The Asbestos Fiduciaries played a role in the overall successful outcome of these Chapter 11 Cases. The Debtors were not only able to pay in full and with interest their billion-dollar asbestos liabilities, but, also, their multi-billion-dollar environmental liabilities, and enormous indebtedness to toxic tort claimants, bondholders or other unsecured creditors. These results are even more exceptional in light of that fact that for the early part of their reorganization, the Debtors were teetering on the brink of liquidation.

A. The Asbestos Fiduciaries Successfully Prosecuted the Exceedingly Challenging and Complex Derivative Asbestos Claims

14. One principal cause of the filing of these Chapter 11 Cases was ASARCO's asbestos liability. More than 100,000 claimants filed asbestos-related claims or submitted electronic claims data against ASARCO

or one or more of the Subsidiary Debtors. In a number of these claims against the Asbestos Subsidiary Debtors, and in prepetition lawsuits, ASARCO was alleged to be derivatively liable for claims against the Subsidiary Debtors, an allegation ASARCO denied. ASARCO sought to rid itself of its "asbestos crisis" in bankruptcy by relegating all liability to the Subsidiary Debtor level, where the companies were essentially empty shells.

15. ASARCO asserted that its asbestos liability was zero.

16. On June 15, **2005**, before filing bankruptcy itself, ASARCO filed a complaint in the Subsidiary Cases initiating Adversary Proceeding No. 05-02048 (the "*Adversary* ") against the Asbestos Subsidiaries and the FCR, seeking a declaration that it was not liable for the asbestos-related liabilities of the Asbestos Subsidiaries under any alter ego theories [\[FN2\]](#). The Adversary complaint recited ASARCO's decade-old position: that it had "never mined, milled, manufactured or sold asbestos or asbestos-containing products." At the time the Adversary was filed, the FCR and OBHT had initially been retained believing their efforts were to negotiate a pre-packaged bankruptcy proceeding. The FCR found himself in the unanticipated position of sued as defendant in an adversary proceeding regarding allegations for which he had no historical knowledge or records.

[FN2](#). The derivative asbestos-related liability of ASARCO in its various procedural postures will be collectively referred to as the "*Derivative Asbestos Liabilities*."

17. Future Claimants would not be able to obtain any meaningful recovery in these Chapter 11 Cases, without a determination that ASARCO was directly or derivatively liable for their asbestos or asbestos-related injuries. Successful derivative liability cases are rare and exceptional in themselves. ASARCO's counsel, Baker Botts, recognized that the derivative nature of ASARCO's asbestos liability presented an opportunity to zero out its asbestos claims and, accordingly, brought to bear the full force of its considerable resources.

***6** 18. The FCR was at an extreme disadvantage in the Adversary. ASARCO named itself as Plaintiff and the Subsidiary Debtors and the FCR, as Defendants. Although nominally included as defendants, the Subsidiary Debtors were wholly-owned and financially-dependant subsidiaries of ASARCO and their interests in the Adversary were aligned with ASARCO. Moreover, once ASARCO filed for bankruptcy protection, it shared legal counsel with the Asbestos Subsidiaries. OBHT was in the position of representing the sole independent defendant in the Adversary, the FCR, who had no historical knowledge of the 40- year corporate relationship between ASARCO and its Asbestos Subsidiaries, no historical knowledge of the Debtors' protracted asbestos litigation, and no access to the records or witnesses necessary to recreate this history.

19. OBHT in coordination with SBEP had to fight for and were granted a realignment of the parties to reflect the true nature of the controversy. Pursuant to a stipulation approved by this Court on April 25,

2006, the Subsidiary Committee and the FCR were granted standing to prosecute the derivative asbestos claims on behalf of the Subsidiary Debtors' estates and were authorized to take the lead role in prosecuting the Adversary Proceeding and all claims, defenses, and counterclaims against ASARCO related to the derivative asbestos claims. Thereafter, on May 9, **2006**, the Subsidiary Committee and the FCR, on behalf of the Asbestos Subsidiary Debtors, filed an Amended Complaint seeking a judgment declaring that ASARCO was liable for the Asbestos Subsidiaries' asbestos-related liabilities under Alter Ego Theories.

20. After the Asbestos Fiduciaries succeeded in realigning and reconstituting the Adversary, ASARCO and Baker Botts then shifted the procedural path for resolving the Derivative Asbestos Claims, seeking to estimate the claims in an abbreviated hearing pursuant to [Section 502\(c\) of the Bankruptcy Code](#). The Asbestos Fiduciaries opposed the estimation, and the Court addressed these issues in a number of hearings, urging the parties to reach a resolution. Efforts to reach a resolution took weeks of protracted negotiations, but by June **2006**, the parties were able to reach a compromise regarding some aspects of the procedure for resolution of the Derivative Asbestos Claims and entered into a written agreement memorializing the compromise. The Debtors and Asbestos Fiduciaries abated the Adversary and agreed to a schedule for resolving the Derivative Asbestos Claims as a contested matter. The time for the FCR and OBHT to prepare its case had been compressed to less than 9 months, and OBHT attorneys began to work around the clock to prepare.

21. Discovery related to the Derivative Asbestos Claims was extensive, and the Bankruptcy Court held numerous status conferences and discovery hearings in connection therewith. ASARCO alleged that, due to the enormous volume of documents, traditional document production was not possible and would be unduly burdensome. At various times it was alleged that as many as 40,000 boxes [\[FN3\]](#) of documents were stored at two warehouse locations: One in Phoenix, Arizona and the other at ASARCO's abandoned mine complex in Sacaton, Arizona.

[FN3](#). While no one has an accurate count of the actual number of boxes stored in Arizona, based upon the relation of total boxes selected for copying to the number of boxes culled from production, Raymond W. Battaglia of OBHT testified he estimated that the likely number of boxes was in excess of 25,000.

*7 22. Beginning on July 17, **2006** and continuing for more than eight weeks, OBHT and SBEP sent teams of lawyers to Arizona to conduct a review of ASARCO's stored warehouse documents during the oppressive summer heat of Phoenix, Arizona and in difficult working conditions.

23. The records of ASARCO's inter-company accounts were vital to proving the Alter Ego Theories alleged by the Asbestos Fiduciaries. OBHT and SBEP spent considerable efforts to reconstruct the financial relationship between ASARCO and its Asbestos Subsidiaries. Despite its involvement in alter ego litigation for the preceding 15 years, ASARCO claimed that it lacked meaningful accounting records reflecting its inter-company accounts for periods after the mid 1990s, when its Asbestos Subsidiaries had

ceased operations. In an effort to locate this important information, OBHT and SBEP sought further document production from ASARCO's current and former auditors Arthur Anderson, LLP; Price Waterhouse Coopers, LLP and Keegan Linscott Kenon, PC and its banking records from Credit Suisse Securities (USA), LLC; and JP Morgan Chase Bank.

24. As a result of its time consuming review of warehouse records, the Asbestos Fiduciaries identified approximately 3,200,000 million pages of possibly relevant documents. The next stage of the process was difficult: to meticulously review and analyze each of the 3,200,000 million pages culled from the Debtors' Phoenix "document dump" and other discovery efforts. From those 3,200,000 million pages of potentially-relevant documents and the expenditure of thousands of hours of work, the Asbestos Fiduciaries successfully reconstructed the concealed history of ASARCO's asbestos enterprise. This reconstruction essentially was the sole avenue of obtaining any factual information to support the Alter Ego Theories, as there were few, if any; known witnesses available to testify or even guide OBHT through the voluminous production. Despite these obstacles, the Asbestos Fiduciaries were able to produce compelling evidence of ASARCO's misuse of the Asbestos Subsidiaries. [\[FN4\]](#)

[FN4.](#) *Trial Brief Filed by Robert C. Pate, Future Claims Representative and the Official Committee of Unsecured Creditors for the Subsidiary Debtors on Behalf of the Estates of Lac D'Amiante du Quebec Ltee and CAPCO Pipe Company, Inc.--Brief on Asarco's Liability for Alter Ego Claims, PATE-OBHT Exhibit 164 ("Alter Ego Liability Brief")* at pp. 205- 227.

25. During their review of ASARCO's document production, the Asbestos Fiduciaries discovered what they considered a "smoking gun" letter prepared by the law firm of Rogers & Wells (the "*Rogers & Wells Opinion* "). Concerned in the mid 1970s by what appeared to be a wave of asbestos litigation, ASARCO had engaged Rogers & Wells, a prominent New York law firm, to analyze the relationship between ASARCO and its Asbestos Subsidiaries. The Rogers & Wells Opinion detailed the relationship between parent and subsidiaries, justifying ASARCO's concerns.

26. Discovery of the Rogers & Wells Opinion, combined with suspicions raised due to the assertions of privilege by ASARCO's counsel, led directly to a battle with ASARCO over attorney client privilege issues and subsequent additional discovery from two prominent law firms which had historically represented ASARCO and its' Asbestos Subsidiaries--Covington & Burling, LLP ("*Covington* ") and Porzio Bromberg & Newman, PC. ("*Porzio* "). The Defendant ASARCO asserted that it held the privilege over attorney client records of the Asbestos Subsidiaries, the plaintiffs in the lawsuit complaining of ASARCO's undue control. The efforts to obtain these withheld documents took months. The Asbestos Fiduciaries, however, were successful in their efforts and were able to inspect allegedly privileged materials of ASARCO and the Asbestos Subsidiaries possessed by ASARCO and Porzio and Covington.

*8 27. At the same time OBHT was forced to engage in the excavation and reconstruction of the Debtors' corporate histories, OBHT was also experiencing similar frustration with the Debtors' asbestos claims

database. In the typical asbestos case, in order to evaluate the Debtor's asbestos claims and demands, each party's expert expects to receive from the debtor an electronic database that provides a comprehensive history of the debtor's asbestos claims history, including the claims' resolutions by judgment or settlement. The database is commonly maintained by the debtor's law firm in order to track the lawsuits that it is retained to defend, and the database has the veracity of a business record relied upon by a business in the performance of its normal operations. ASARCO's historic claims database that was ultimately provided to the various asbestos claims estimation experts was not compiled in the course of ASARCO's (or its law firms') business but was instead produced specifically for the estimation proceeding, cobbled together from multiple sources.

28. The asbestos damages experts retained by the various parties produced remarkably different liability estimations. The Asbestos Fiduciaries' asbestos damages expert, Dr. Mark Peterson, estimated ASARCO's current and future asbestos liability to be between \$1.3 billion and \$2.1 billion. However, the asbestos damages experts retained by the Debtors and the ASARCO Committee (Dr. Francine Rabinovitz and Dr. Charles Bates, respectively) produced significantly lower estimates. Dr. Rabinovitz estimated ASARCO's asbestos liability only to be between \$280 million and \$457 million; and Dr. Bates estimated ASARCO's liability only to be between \$80 million and \$160 million.

29. On August 30, **2007**, ASARCO filed an emergency motion to mediate the contested matter without suspending its November **2007** trial date.

30. The Court ordered the parties to mediation on October 29 through 31, **2007**, with Bankruptcy Judge Elizabeth W. Magner of the United States Bankruptcy Court for the Eastern District of Louisiana serving as mediator. The mediation as ordered by the Court occurred at the Bankruptcy Court in New Orleans, Louisiana and was attended by counsel and representatives for the Debtors, the Parent, and the largest creditor constituents in the Chapter 11 Cases. The mediation continued through January **2009**, and the parties were able to reach agreement on not only a settlement of the Derivative Asbestos Claims but also a global resolution of the Chapter 11 Case through a consensual plan of reorganization.

31. On account of the apparent settlement, the prosecution of the Derivative Asbestos Claims was abated, and the FCR and OBHT then focused their efforts in assisting the Debtors to obtain approval of bid procedures for selecting a Chapter 11 plan sponsor and, after implementation of those procedures, approval of the selection of Sterlite as the winning bidder, on October 13, **2008**. Sterlite subsequently breached the agreement and a new agreement was negotiated with Sterlite.

*9 32. On April 12, **2009**, after extensive negotiations with the Parent, the Asbestos Committee and the FCR executed an agreement in principle with the Parent (the "*Parent AIP* ") that presented and alternatively resolved the treatment of Asbestos Personal Injury Claims and Demands in a Parent-sponsored plan of reorganization. Pursuant to the Parent AIP, both the FCR and the Asbestos Committee agreed to oppose the Sterlite 9019 Motion and sale of the Debtors' operating assets to Sterlite and

confirmation of the Debtors' Plan, and the Asbestos Committee would not recommend that their constituents deliver sufficient votes nor would the FCR consent to support a [section 524\(g\)](#) channeling injunction under the Debtor's Plan. In return, the Parent agreed to deposit \$1.3 billion in cash or cash equivalent into an escrow account, to propose a revised Parent sponsored plan of reorganization providing for treatment of all claims in the bankruptcy and the retention of the Parent's equity ownership in ASARCO, and to allow Asbestos Personal Injury Claims in the aggregate amount of \$1.0 Billion, and channel asbestos claims to a [Section 524\(g\)](#) Trust, funded with a contribution of cash and Note totaling \$750 million, all asbestos insurance proceeds, and a \$27.5 million administrative claim to fund the trust's administration costs. This settlement agreement marked the first time in the ASARCO bankruptcy case that a major creditor group had reached an agreement with the Parent as to treatment of their claims and the presentation of a viable alternative cause of action.

33. On April 27, **2009**, the Court entered a Supplement to the Second Amended Case Management Order setting a trial of the Contested Matter on June 22, **2009** (the "*Asbestos CMO* ").

34. The FCR and OBHT began emergency and extensive preparation for a trial of the Contested Matter, pulling all available OBHT attorneys and staff into the enterprise and undertaking an exhaustive review and analysis of the gathered evidence. Work product that had lain dormant for an extended time had to be revived, reorganized and detailed work assignments determined. Despite these emergency conditions thrust upon them, two trial briefs were prepared in record time, one setting out in 280 pages the facts and law overwhelmingly supporting ASARCO's derivative liability and another setting out the projection of \$1.3 to \$2.1 billion in damages that ASARCO faced. OBHT along with counsel for the Asbestos Committee, prepared and filed expert reports, designated approximately 3,200 exhibits and deposition designations, conducted depositions of expert witnesses, and prepared for the presentation of their case. On May 13, **2009**, four years after ASARCO first sought to determine its asbestos liability and only a month before trial, ASARCO petitioned this Court to expand the scope of the Contested Matter to include a determination of direct asbestos claims against ASARCO.

35. Faced with a superior Parent-sponsored Plan produced through the efforts of the Asbestos Fiduciaries, the Debtors and Sterlite initiated proposals for the improved treatment of asbestos in the New Sterlite Plan. These talks proved successful, and on June 12, **2009**, the Asbestos Fiduciaries informed the Parent that they were exercising their "fiduciary out" under the Parent AIP as a consequence of entering into an agreement in principle with Sterlite (the "*Sterlite Counter AIP* ") with the Debtors and Sterlite. The Sterlite AIP provided that asbestos claimants and Demand holders would agree to reduce their "asserted claims" to a \$1.0 billion allowed claim, and the asbestos claims would be channeled to a [Section 524\(g\)](#) Trust funded with (A)(i) a pro rata share of all cash distributed to unsecured creditors; (ii) a pro rata share of the Purchaser Promissory Note; (iii) a pro rata share of litigation trust interests (all based upon a \$750 Million claim amount (with a \$160 million "put" option exercisable by the proposed asbestos trust between years 2 and 4, post-confirmation); (B) rights to all insurance proceeds from all policies with

respect to Asbestos Claims; and (C) \$27.5 million to cover costs of administrating the Trust. Other agreements were also reached, including extension of the DIP Loan through the Effective Date. Shortly thereafter, the Debtors, the Asbestos Committee and the FCR entered into an agreed order abating all deadlines governing the Derivative Asbestos Contested Matter, which was entered by the Court on June 17, 2009.

*10 36. The competitive process spawned by the Asbestos Fiduciaries continued to produce enhanced treatment for the asbestos claimants. The Asbestos Fiduciaries subsequently entered into an enhanced Parent AIP (the "*First Enhanced Parent AIP*"), which memorialized the exercise of their fiduciary out and wherein the Parent agreed to increase the overall consideration to be paid under its Plan and other enhancements to unsecured claims; and the Asbestos Committee agreed to recommend, without stating a preference, that asbestos claimants vote to accept both the Parent's Plan and the Debtors' Plan and that asbestos claimants vote to reject all other plans. The FCR also agreed to support confirmation of both the Parent's Plan and the Debtors' Plan over all plans. In return, the Parent agreed to increase the amount of the one-year, six percent Asbestos Trust promissory note to \$280 million and cause AMC to guaranty it and secure it by a first lien on all of Reorganized ASARCO's assets and a pledge from the Parent of 51 percent of the equity in Reorganized ASARCO.

37. On August 17, 2009, on the sixth day of the ten-day Confirmation Hearing, the Parent proposed yet again a further enhanced plan that paid all creditors in full with interest.

38. By the close of the Confirmation Hearing, not only had all other creditors benefited from their extraordinary efforts, but the Asbestos Fiduciaries had reached agreements with both plan proponents to settle the Derivative Asbestos Claims for an allowed claim of \$1 billion to be funded into a [§ 524\(g\)](#) Asbestos Trust with cash and assets valued at approximately \$940 million. These monumental settlements represented a 350% premium over the Debtors' asbestos damages valuation; 1,250% over the ASARCO Committee's asbestos damages valuation; and 5,588% over the first \$17 million pre-petition settlement offer-and represented substantial payments for asbestos claims for which ASARCO had repeatedly and historically denied it had any liability whatsoever. Truly, this is a rare and exceptional result produced by the superior performance by the Asbestos Fiduciaries individually and as a group.

B. The FCR Also Played an Expanded Role in these Chapter 11 Cases

39. In addition to his work maximizing recovery for the Asbestos Personal Injury Claimants, the FCR in many ways served as one of the principle fiduciaries for the overall Chapter 11 Cases. From the very beginning of the case, the FCR's views concerning a broad array of case issues were sought and requested by the Debtors' counsel, and he was expected to participate in matters concerning the Debtors' overall rehabilitation under the Bankruptcy Code and was asked repeatedly by the Debtors' counsel to comment on key decisions and overall strategy. His work was necessary and often requested by the other parties in interest. They had good reason to do so: the key to the recovery for any of the creditors of these Chapter

11 Cases estates was the Debtors' ability to operate as a going concern and emerge from Chapter 11 with a channeling injunction pursuant to [Section 524\(g\) of the Bankruptcy Code](#). The latter, in particular, required the FCR's consent.

*11 40. The FCR and OBHT provided critical assistance in appointing independent management to ASARCO's board that were not beholden to the Parent or were not otherwise conflicted. ASARCO's new and independent management "stabilized ASARCO's operations, increased production and efficiency, cut costs, strengthened the Company's financial department, hired executives to assist with developing and implementing a business strategy, established credibility with the Company's employees, vendors, and creditors, and eventually stewarded the Company into profitability."

41. At the request of the Debtors, the FCR and OBHT reviewed and provided comments on numerous drafts of plan sponsor agreements. The FCR and OBHT attended the plan sponsor selection meeting held at the offices of Debtors' counsel, met with the Debtors, their financial advisors, the Parent and potential bidders. Together with the Asbestos Committee's counsel, OBHT attorneys drafted the Asbestos Trust Agreement and Asbestos Trust Distribution Procedures.

42. The FCR and OBHT participated in the estimation of the Debtors' environmental liabilities, toxic tort liabilities and the more significant claims in the bankruptcy estates. OBHT attorneys traveled to the mediations of the different sites, consulted with both the Debtors' and the plaintiffs' or government's attorneys, and made recommendations to the Debtors on settlement strategy. The presence of case fiduciaries, including OBHT attorneys, at the mediations often assisted the Debtors in acclimating claimants' counsel with the general mechanics of settling claims in bankruptcy proceedings and in the particular context of these Chapter 11 Cases. The FCR and OBHT also monitored and participated in the more significant claims objections, offering their suggestion to Debtors' counsel on the reasonableness of settlement offers and other procedural and substantive matters before the Bankruptcy Court and, when solicited, overall strategy.

IV. The FCR's and OBHT's Compensation During the Chapter 11 Cases

A. Sources of Compensation for the Asbestos Fiduciaries

43. For the first three years of these Chapter 11 Cases, the FCR and OBHT were appointed to represent the Future Claimants in the Subsidiary Cases filed on April 11, **2005**. At that time and throughout the Chapter 11 Cases, the Subsidiary Debtors were essentially empty shells. The Asbestos Fiduciaries who provided services in the Subsidiary Cases were completely dependent on the proceeds from various cash settlements with the Debtors' asbestos insurers for their fees and expenses. As a result, the Debtors and the Asbestos Fiduciaries executed stipulations wherein they agreed to escrow these insurance proceeds in a designated account for the purpose of paying the Asbestos Fiduciaries' fees and expenses.

44. By the time the asbestos insurance escrow proved insufficient, ASARCO had improved financially and was able to provide debtor-in-possession financing to the Asbestos Subsidiaries in order to pay the fees and expenses of the Asbestos Subsidiaries' professionals.

*12 45. The fees and expenses of the Asbestos Fiduciaries for services provided in the ASARCO Cases were paid directly by ASARCO.

B. Interim Compensation Procedures

46. The Debtors requested and this Court entered certain orders pursuant to [Section 331 of the Bankruptcy Code](#) governing the interim compensation of professionals in both the Subsidiary Cases and the ASARCO Cases (the "*Interim Compensation Orders*")

47. The Interim Compensation Orders provided a streamlined procedure for the periodic payment of fees and costs of all court-appointed professionals (the "*Professionals*") prior to actual allowance by the Court but after amply opportunity for certain parties, including the Debtors, the U.S. Trustee, the appointed creditors committees and their respective counsel (the "*Reviewing Parties*") to review the Professional's fee and expense statements. The Interim Compensation Orders further gave all parties in interest, creditors, and the Court an opportunity to review and object to the fee and expense statements of all Professionals as filed with the Court every four (4) months.

48. Specifically, pursuant to the Interim Compensation Orders, all Professionals were required to submit to the Reviewing Parties on a monthly basis detailed statements of services rendered and expenses incurred for the prior month (the "*Monthly Statements*"). Absent a timely objection (for the Subsidiary Cases, 15 days, and for the ASARCO Cases, 20 days), the respective Debtor entity would remit payments for 100% of the incurred expenses and a portion of the fees. For the Subsidiary Cases, 100% of fees were remitted with a requirement that the professional segregate 20% in an IOLTA Trust account, and in the ASARCO Cases, ASARCO remitted 80% of fees with ASARCO itself holding back the remaining 20%.

49. In the event that any of the Reviewing Parties had an objection to a professional's Monthly Statement, the Reviewing Party was required to serve such objection in written form on the relevant Professional as well as a notice of the objection on the other Reviewing Parties. If the objecting Reviewing Party and Professional were unable to reach an agreement on the correct payment to be made, the Professional had the choice of foregoing payment of the disputed amount until the next interim fee application or filing the objection and a corresponding request for payment with the Court for resolution.

50. In addition to the service and exchange of Monthly Statements, professionals were also required by the Interim Compensation Orders to file with the Court every four (4) months and to serve on all parties entitled to notice an application for interim Court approval and allowance, pursuant to [Section 331 of the Bankruptcy Code](#), for compensation and reimbursement of expenses for the prior four (4) months (the

"*Interim Compensation Applications* "). Upon the Court's entry of an order approving the Interim Compensation Application, ASARCO was authorized to pay the unpaid 20% of fees to the ASARCO Case professionals, and professionals in the Asbestos Subsidiary Cases were authorized to draw down on the 20% set-aside in their IOLTA Trust accounts.

C. OBHT's Preparation and Submission of Monthly Statements and Interim Compensation Applications

*13 51. OBHT submitted Monthly Statements for both the Subsidiary Cases and the ASARCO Cases to the relevant Reviewing Parties set out in the respective Interim Compensation Orders. OBHT also filed, submitted, and served Interim Compensation Applications for both the Subsidiary Cases and the ASARCO Cases pursuant to the requirements of the Interim Compensation Orders, [Section 331 of the Bankruptcy Code](#), the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules* "), the applicable general orders and local rules of the United States Bankruptcy Court of the Southern District of Texas (the "*Local Rules* ") and the U.S. Trustee's Office *Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses filed under 11 U.S.C. § 330* (the "*U.S. Trustee Guidelines* "). The Interim Compensation Applications contained sufficient detail and information and to otherwise comply with the Bankruptcy Code, Bankruptcy Rules, Fifth Circuit law, and the Guidelines.

52. John H. Tate, II, a shareholder of OBHT and the OBHT attorney responsible for billing matters in these Chapter 11 Cases, testified that OBHT's Monthly Statements reflected the billing attorneys' actual expenses and hours worked. He further testified that OBHT's billing practices throughout the Chapter 11 Cases were thorough, careful and complete and complied with the requirements of the Bankruptcy Code, the Bankruptcy Rules, Fifth Circuit law and the Guidelines. In fact, OBHT put in place a review process wherein Mr. Tate or attorneys under his supervision and direction would review the pro forma invoices generated by OBHT's accounting department and make appropriate corrections for inadvertent billing errors and completeness and to otherwise insure compliance with the Guidelines. Mr. Tate and OBHT attorneys also made certain redactions of privileged or confidential information, such as strategy, when that information could compromise or hinder the FCR's prosecution of the Derivative Asbestos Liability Claims or other privileged or confidential matters that affected the interests of the Future Claimants.

53. Mr. Tate also testified that OBHT made certain accommodations to the Debtors' estates that departed from their customary billing practices. When recording time entries for non-working travel, OBHT timekeepers discounted their non-working travel time by one-half unless they were actually working on case-related matters during such travel. OBHT attorneys did not seek reimbursement for first class seating or any other luxurious accommodations. Unless unavoidable due to particular circumstances, all commercial air travel was at all times charged at or below a refundable economy fare.

54. OBHT also allocated the services it performed to the Subsidiary Cases, the ASARCO Case or the Additional Debtors Cases, according to who was the beneficiary of such services. Many times OBHT

services benefited the Future Claimants in the Chapter 11 Cases as a whole, and the allocation of OBHT time was a highly subjective determination. Accordingly, Mr. Tate testified that he allotted OBHT time entries to the respective Debtor to the best of his ability.

*14 55. OBHT also complied with the U.S. Trustee Guidelines. In its Interim and Final Fee Applications, OBHT categorized the time spent by OBHT attorneys and paraprofessionals by the categories suggested in the U.S. Trustee Guidelines and drafted overall narratives summarizing the services that OBHT provided. The Interim Fee Applications sorted the hours of services provided by attorney and paraprofessional, listed the respective hourly rates of the attorneys and paraprofessionals, and calculated a blended rate. The Interim Fee Applications also set out the factors normally considered by the courts in reviewing fee applications and provided argument and support for how OBHT met these factors and considerations.

D. OBHT's Reliance on Absence of Objections to Monthly Statements and Interim Compensation Applications

56. Mr. Tate testified that from time to time, OBHT was contacted by the U.S. Trustee's Office requesting additional information or supporting documents for an expense item in OBHT's Monthly Statements. OBHT provided the requested information or documentation to the satisfaction of the U.S. Trustee's Office, and OBHT never received from the U.S. Trustee, ASARCO, any of the Reviewing Parties, or any other creditor or party in these Chapter 11 Cases any comment or objection as to the failure of any time entry therein to comply with the guidelines as to any of its Monthly Statements or any of Interim Compensation Applications. The Court entered orders approving all of OBHT's Interim Compensation Applications and 100% of fees and expenses (except for certain 20% "stub period" fees in OBHT's Final Fee Application) were paid during the course of the Chapter 11 Cases.

57. Mr. Tate testified that the absence of comments or objections to OBHT's Monthly Statements and Interim Compensation Applications and the Court's entry of orders approving OBHT's Interim Compensation Applications caused him to believe and to rely upon the fact that the information and detail provided in the OBHT Monthly Statements and Interim Compensation Applications (i) were sufficient to enable the reviewing parties, ASARCO, all parties entitled to notice, and the Court to make an independent assessment as to the reasonableness and necessity of OBHT's services and incurred expenses and (ii) were in technical compliance with the Bankruptcy Code, Bankruptcy Rules, Fifth Circuit law, and the Guidelines. The first time that Reorganized ASARCO and the Parent filed any objection to OBHT's requested fees and expenses was when Reorganized ASARCO and the Parent filed the objections that were the subject of June 15-17, 2010, hearings.

E. OBHT's Final and Supplemental Fee Applications

58. On February 8, **2010**, OBHT filed its Final Fee Application. The Final Fee Application requested final allowance and approval of the time and expenses (i) approved on an interim basis in the Interim Compensation Orders and (ii) incurred during the period from December 1, **2009** to December 9, **2010** (the "*Stub Period*"), wherein OBHT performed services and incurred expenses after its last Interim Compensation Application and prior to closing of the Parent's Plan. In its Final Fee Application, requested compensation for 34,640.30 hours of professional time which, according to the respective standard hourly rates for its attorneys, total \$10,187,728.50 and out-of-pocket expenses totaling \$647,076.67. Contemporaneously with the Final Fee Application, the FCR and OBHT filed a Joint Enhancement Application, wherein OBHT requested an upward adjustment of twenty-five percent (25%) to its average lodestar rate to reflect the true market value of its services. In this regard, OBHT requested that the Court approve and allow on a final basis \$12,734,660.63 in fees and \$647,076.67 in expenses.

***15 59.** OBHT filed two supplemental applications, requesting fees and expenses incurred during the post-confirmation period preparing and defending its Final Fee Application and Joint Enhancement Application against the objections of Reorganized ASARCO and the Parent. On June 11, **2010**, OBHT filed its first supplement (the "*First OBHT Supplemental Application*"), and on June 29, **2010**, OBHT filed its second supplement (the "*Second OBHT Supplemental Application*," together with the First OBHT Supplemental Application, the "*OBHT Supplemental Applications*"). The First OBHT Supplemental Application requested the Court to approve and allow on a final basis an additional \$182,103.25 in fees and \$5,943.85 in expenses for preparing and defending its and the FCR's Final Fee Applications and \$141,771.50 in fees and \$5,943.85 in expenses for preparing and defending the Joint Enhancement Application. The Second OBHT Supplemental Application requested the Court to approve and allow on a final basis an additional \$121,319.75 in fees and \$17,680.33 in expenses for preparing and defending its and the FCR's Final Fee Applications and \$87,614.75 in fees and \$22,313.60 in expenses for preparing and defending the Joint Enhancement. The fees requested in the OBHT Supplemental Applications were calculated in accordance with OBHT's standard hourly rates at the time the services were rendered.

60. The Second OBHT Supplemental Application also estimates that OBHT will expend an additional 140 hours, more or less, at its attorneys' standard billing rates in preparing proposed findings of fact and conclusions of law and preparing and presenting final arguments. OBHT further expects to incur an additional \$50,000.00 in fees and \$5,000 in expenses, more or less, to be equally divided between the Final Fee Application and Joint Enhancement Application. OBHT estimated that, in the event of an appeal to the District Court, it would incur approximately an additional \$50,000.00 in fees and \$5,000.00 in expenses, more or less, to be equally divided between the Final Fee Application and Joint Enhancement Application.

61. In sum, OBHT requested final approval of the following:

OBHT Fees and Expenses

Period	Fees	Expenses
Pre-Plan Effective Rate (Pre Dec. 9, 2009)	\$10,187,728.50	\$647,076.67
25% Upward Adjustment of Pre-Confirmation Fees	\$2,546,932.13	\$0.00
Post-Confirmation (Post Dec. 9, 2009)		
Services Related to Final Fee Application	\$302,423.00	\$23,624.18
Services Related to Enhancement Application	\$229,386.25	\$28,257.45
Estimated Post-June 28, 2010		
Services Related to Final Fee Application	\$25,000.00	\$2,500.00
Services Related to Enhancement Application	\$25,000.00	\$2,500.00
Estimated District Court Appeal		
Services Related to Final Fee Application	\$25,000.00	\$2,500.00
Services Related to Enhancement Application	\$25,000.00	\$2,500.00
TOTAL		\$13,366,469.88 \$708,958.30

F. The FCR's Final and Supplemental Fee Applications

*16 62. The Future Claims Representative filed fourteen interim fee applications in the subsidiary cases and four interim fee applications in the ASARCO Cases and, in each instance, informed this Court that the rates being charged for his services was a normal rate without consideration of size and degree of responsibility, difficulty and complexity. On February 8, **2010**, the FCR filed his Final Fee Application. His Final Fee Application requested final allowance and approval of the time and expenses (i) approved on an interim basis in the Interim Compensation Orders and (ii) incurred during the Stub Period, wherein the FCR performed services and incurred expenses after his last Interim Compensation Application and prior to closing of the Parent's Plan. In his Final Fee Application, the FCR requested compensation for 4,251.95 hours of professional time which, according to his standard hourly rate for the respective years,

total \$1,442,277.50 and out-of-pocket expenses totaling \$73,680.39. Pursuant to the Joint Enhancement Application, the FCR requested an upward adjustment of twenty-five percent (25%) to his standard rates to reflect the prevailing market rates or the true market value of his services. In this regard, the FCR requested that the Court approve and allow on a final basis \$1,802,846.88 in fees and \$73,680.39 in expenses.

63. The FCR also filed two supplemental applications, requesting fees and expenses incurred during the post-confirmation period preparing and defending his Final Fee Application and the Joint Enhancement Application against the objections of Reorganized ASARCO and the Parent. On June 11, **2010**, the FCR filed his first supplement (the "*First FCR Supplemental Application*"), and on June 29, **2010**, the FCR filed his second supplement (the "*Second FCR Supplemental Application*," together with the First FCR Supplemental Application, the "*FCR Supplemental Applications*"). The First FCR Supplemental Application requested the Court to approve and allow on a final basis an additional \$73,912.50 in fees and \$3,712.61 in expenses for preparing and defending his Final Fee Application and the Joint Enhancement Application. The Second FCR Supplemental Application requested the Court to approve and allow on a final basis an additional \$7,377.72 in fees and \$1,212.72 in expenses for preparing and defending his Final Fee Applications and \$26,178.90 in fees and \$5,163.90 in expenses for preparing and defending the Joint Enhancement. The fees requested in the FCR Supplemental Applications were calculated in accordance with Judge Pate's standard hourly rate at the time the services were rendered.

64. In sum, the FCR requested final approval of the following:

FCR Fees and Expenses

Period	Fees	Expenses

Pre-Plan Effective Rate (Pre Dec. 9, 2009)	\$1,442,277.50	\$73,680.39

25% Upward Adjustment of Pre-Confirmation Fees	\$360,569.38	

Post-Confirmation (Post Dec. 9, 2009)		

Services Related to Final Fee Application	\$81,290.22	\$4,925.33

Services Related to Enhancement Application	\$26,178.90	\$5,163.90

TOTAL	\$1,910,316.00	\$83,769.62

V. Reorganized ASARCO's Objection to the FCR's and OBHT's Final Fee Application

*17 65. On March 10, 2010, Reorganized ASARCO filed its Objections to the FCR's and OBHT's Final Fee Applications.

66. On June 15, 2010, the opening day of the Hearings on the FCR's and OBHT's Applications, Reorganized ASARCO withdrew its Objections to the FCR's Final Fee Application by a last minute announcement through counsel in open court-- leaving only Reorganized ASARCO's Objections to OBHT's Final Fee Enhancement and Reorganized ASARCO's and the Parent's Objections to any upward adjustment of the FCR's or OBHT's standard hourly rates.

67. For the reasons set forth herein, the Court finds and concludes that none of Reorganized ASARCO's Objections to OBHT's Final Fee Application form a legitimate basis for disallowing any of OBHT's fees and expenses, particularly when properly viewed in the context of the almost five years covered, the non-existence of any prior comments or objections, the complexity of the Chapter 11 Cases, the work performed, and the exceptional outcome.

VI. OBHT's Fee Applications and Underlying Monthly Statements Contain the Necessary Information for the Court to Determine the Underlying Services were Reasonable and Necessary

68. The Fifth Circuit has repeatedly held that fee applications and the underlying invoices do not need to "reach an ideal level of completeness"; rather they must contain "the necessary information," such as "the amount of time devoted to the case by each of the involved persons." [*Lawler v. Teofan \(In re Lawler\)*, 807 F.2d 1207, 1212 \(5th Cir.1987\)](#); see also [*Continental Illinois Nat'l Bank & Trust Co. of Chicago v. Charles N. Wooten, Ltd. \(In re Evangeline Refining Co.\)*, 890 F.2d 1312, 1326 \(5th Cir.1989\)](#). This "necessary information" can be contained in both the fee applications as well as the record of the court. [*Evangeline Refining Co.*, 890 F.2d at 1326](#) ("an application must be sufficiently detailed and accurate that, in conjunction with any proceeding in connection therewith and the record in the case, a court can make an independent evaluation as to what level of fees are actual, necessary and reasonable"). The Fifth Circuit has denied as "wasteful" objections to fee applications requiring "an elaborate breakdown of [attorneys'] activities when the information was readily available in the time records submitted to the bankruptcy courts." [*Lawler*, 807 F.2d at 1212 \(5th Cir.1987\)](#)(where objectors contended that the applicants should have "specif [ied] the amount of time devoted to each phase of the bankruptcy proceedings and the time spent preparing the fee application").

69. In large, long, complex cases, the Court should look at totality of circumstances and not nitpick fee entries. [*In re Amdura Corp.*, 139 B.R. 963, 972 \(Bankr.D.Colo.1992\)](#)("As the Court has already observed, there were many services provided in this case in a relatively short time period. The client required attention to multiple tasks, most of which also involved serious time pressures. Many hours were billed by the professionals. It is reasonable under any circumstances to expect that, out of the totality of hours

billed, there may be some percentage of entries which contain less information than is optimally desirable. The Court ought to consider such objections in the totality of the circumstances when evaluating whether the fees and charges overall were reasonable and necessary. This evaluation will be more fully discussed and addressed below.").

*18 70. An attorney's time entries must be sufficiently detailed and accurate that, in conjunction with any proceeding in connection therewith and the record in the case, the Court could make an independent evaluation as to what level of fees are actual, necessary and reasonable.

71. All of the time entries in the Fee Applications before the court comply substantially with the Southern District Guidelines and contain sufficient information and detail to allow the court to assess their reasonableness.

72. Representation of constituents in complex chapter 11 proceedings with numerous document-intensive, complex contested issues require the attendance of multiple attorneys at hearings and coordinating conferences. Courts have even accommodated this necessity in their general orders. The Court acknowledges, however, that in complex chapter 11 cases the need for multiple professional's involvement will be more common and that in hearings involving multiple or complex issues a law firm may justifiably be required to utilize multiple attorneys as the circumstances of the case require. OBHT staffed the case appropriately.

73. OBHT did not unnecessarily use multiple attorneys.

74. Based on the foregoing findings and conclusions, the Court concludes that any objections to the fees and expenses of OBHT are without merit and are therefore overruled.

75. Reorganized ASARCO argues that OBHT requested compensation for services "clerical in nature" that "are not properly compensable." For this proposition, Reorganized ASARCO cites only to *one* entry: "Print out cases used in Asarco memo." *See* Objection to Final Fee Application at ¶ 35 (referencing *Fourth Interim Fee Application*, Exhibit D, Docket No. 2927, Time entry on 6/19/06). Reorganized ASARCO provided no additional objectionable time entries for improper overhead costs at the Hearing or in the Hawke Report. Accordingly, the Court will only regard the one cited example.

76. Mr. Tate testified that he reviewed the cited time entry and discussed the underlying work with the OBHT attorneys who assigned it. It involved a paralegal researching and cite-checking on Westlaw cases cited in a legal brief and printing and organizing the full opinions and statutes for attorney use. This service is not an overhead cost, and the Court overrules Reorganized ASARCO's objection.

77. OBHT and the FCR itemized their expenses as required by the Bankruptcy Rules and the Southern District of Texas Local Rules and standing orders. OBHT and the FCR were not required to attach

receipts and invoices to its applications but did provide them from time to time upon request by the U.S. Trustee's Office. The U.S. Trustee's Office was satisfied with the provided information and documents and OBHT received no objections as to any of its expenses detailed in its Monthly Statements or Interim Fee Applications. Accordingly, the Court overrules any objections to the expenses in the Fee Applications.

*19 78. The services performed by OBHT in connection with non-asbestos, non-environmental claims were necessary and beneficial to the Future Claimants, the Subsidiary Debtors' estates, and the overall Debtors' estates. The FCR owed a fiduciary duty to his constituents to familiarize himself with competing claims and available assets and develop an assessment of their value. The need for such an assessment was recognized in the Pre-Petition Engagement Letter with the Asbestos Subsidiaries and readily conceded by Baker Botts, counsel for the pre-confirmation Debtors.

79. The FCR and OBHT did not duplicate the work of any other Professional in the non-asbestos, non-environmental claims estimations. Judge Pate was appointed to represent a specific unique constituency, the Future Claimants, who have different interests than any other creditor constituents, including the current asbestos claimants. The services OBHT performed as the FCR's counsel were performed in compliance with the orders entered by the Court on the request of the Debtors. The FCR's participation in and formulation of the terms of a plan of reorganization required the FCR and his counsel, OBHT, to understand and independently assess the potential value of all of the claims against and the assets of the Debtors' collective estates. Accordingly, the FCR instructed OBHT to monitor and participate as needed in various adversary proceedings, claims estimations and other contested matters. Accordingly, the Court overrules any objection based on duplication.

80. The FCR and OBHT did not duplicate the work of the Asbestos Committee in prosecuting the Derivative Asbestos Claims. The FCR was appointed and ordered by the Court to protect the interests of Future Claimants, which required an independent assessment of the Debtors' direct and derivative asbestos liabilities. The Subsidiary Debtors, ASARCO, and the Additional Debtors requested the FCR's appointment in recognition that future asbestos claimants have interests that are different and sometimes in conflict or opposition to the interests of current asbestos claimants.

81. The FCR and OBHT made all efforts to avoid duplication of work with SBEP on mutually beneficial or necessary projects with SBEP in order to avoid duplication of efforts. Mr. Battaglia testified that he and his SBEP counterpart, Peter D'Apice, coordinated on all aspects of document review, document analysis and the drafting of the brief on liability. The FCR and OBHT also jointly engaged and shared asbestos damages and alter ego liability experts, financial advisors, and insurance counsel with the Asbestos Committee.

VII. Compensation of Professionals Retained in Bankruptcy Cases Pursuant to [Section 330](#)

82. Prior to the Bankruptcy Act of 1978, a bankruptcy court could compensate the provider of legal services to the bankrupt estate if the amount of the award was "reasonable." See Section 64(a)(1) of the Bankruptcy Act, [11 U.S.C.A. § 104 \(Supp.1976\)](#) and Rule 219(c)(1) of the Rules of Bankruptcy Procedure. In an effort to "establish an objective basis for determining the amount of compensation that is reasonable for an attorney's services," the Fifth Circuit, in [Matter of First Colonial Corp. of America, 544 F.2d 1291 \(5th Cir.1977\)](#), cert. denied, [431 U.S. 904, 97 S.Ct. 1696, 52 L.Ed.2d 388 \(1977\)](#), required bankruptcy courts to consider the twelve factors set forth in [Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 \(5th Cir.1974\)](#).

*20 83. In 1994, [Section 330\(a\)](#) was amended to provide more statutory guidance on the appropriate factors to be considered in awarding compensation. The statute added the following new standards for measuring "reasonable compensation":

- (3) In determining the amount of compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including
- (A) the time spent on such services;
 - (B) the rates charged for such services;
 - (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
 - (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and
 - (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

[11 U.S.C. § 330\(a\)\(3\)](#) (as amended in 1994). Congress appears to have codified certain of the *Johnson* Factors, relevant to bankruptcy cases, into [Section 330](#). The Fifth Circuit has yet to determine whether the analysis of *Copper Liquor* and its progeny is still applicable in light of the clear and specific direction of the statute. See *El Paso Refinery*, 257 B.R. at 828-29.

A. The Lodestar is the Starting Point for Determining Reasonable Compensation Under [Section 330](#)

84. Whether in accordance with the three-step analysis of *Copper Liquor* or the plain language of [Section 330](#), any determination of reasonable compensation begins with the lodestar calculation. See [In re Cahill, 428 F.3d 536, 539-40 \(5th Cir.2005\)](#) ("The Fifth Circuit has traditionally used the lodestar method to calculate 'reasonable' attorneys' fees under [§ 330](#)." (citing [In re Fender, 12 F.3d 480, 487 \(5th Cir.1994\)](#); [In re King, 350 B.R. 327, 332 \(Bankr.S.D.Tex.2006\)](#) ("The 'lodestar' method of calculating fees builds on the Johnson factors and is traditionally used by the Fifth Circuit."); [In re Unger & Assocs., 277 B.R. 694, 697 \(Bankr.E.D.Tex.2001\)](#) (same) (citing [In re First Colonial Corp. of Am., 544 F.2d 1291, 1299 \(5th Cir.1977\)](#))).

85. The Supreme Court has held that the lower courts must first determine the prevailing market rate "lodestar" in calculating reasonable compensation. [Blum v. Stenson](#), 465 U.S. 886, 888, 79 L.Ed.2d 891, 104 S.Ct. 1541 (1984) (citing [Hensley v. Eckerhart](#), 461 U.S. 424, 76 L.Ed.2d 40, 103 S.Ct. 1933 (1983)) and, recently, *Perdue v. Kinney*, 539 U.S. ---- (2010) (citing *Blum*, *supra.*) The Supreme Court has instructed that "the 'lodestar' looks to 'the prevailing market rates in the relevant community.'" *Perdue v. Kinney*, 539 U.S. ---- (2010) (citing *Blum*, *supra.*). The Fifth Circuit has earlier similarly observed that the lodestar is equal to the number of hours reasonably expended multiplied "by the prevailing hourly rate in the community for similar work." [Matter of Lawler](#), 807 F.2d 1207, 1211 (5th Cir.1987)(citing [Copper Liquor, Inc. v. Adolph Coors Co.](#), 684 F.2d 1087, 1093 (5th Cir.1982)). In determining the lodestar, the bankruptcy court must "establish[] reasonable hourly rates for all of the persons who worked on the case." [Lawler](#), 807 F.2d at 1211. In engaging in a market rate comparison, bankruptcy courts are not circumscribed in their analysis by arbitrary geographic limitations. The "community" of professionals to which a bankruptcy court properly should look for comparison purposes is the community of lawyers capable of performing "similar work." [In re Fender](#), 12 F.3d at 487 (stating that "the lodestar is computed by multiplying the number of hours reasonably expended by the prevailing hourly rate in the community for similar work"). Such an approach makes sense: Many bankruptcy cases are often more regional or even national than they are local in scope, so that looking solely to the local community's range of rates would impose an unnecessarily parochial cap on the case. In addition, bankruptcy is sufficiently specialized that a firm with the skills necessary to meet the needs of a particular debtor might not be available in the local community. *In re El Paso Refinery*, 257 B.R. at 831; see also [Arbor Hill Concerned Citizens Neighborhood Assoc.](#), 522 F.3d 182, 192 (2d Cir.2008) ("The legal communities of today are increasingly interconnected. To define markets simply by geography is too simplistic. Sometimes, legal markets may be defined by practice area.").

*21 86. When adjusting a reasonable fee determined by the lodestar method (i.e., reasonable hours expended multiplied by the prevailing market rate), however, the Supreme Court has held that the prevailing market rate lodestar calculation is strongly presumed to result in a reasonable fee, and that adjustments from the lodestar can only be made in rare and exceptional cases supported by specific evidence. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. at 565 (citing [Blum v. Stenson](#), 465 U.S. 886, 898-900, 79 L.Ed.2d 891, 104 S.Ct. 1541) and, *Perdue v. Kinney*, 539 U.S. ---- (2010)). The Supreme Court has also instructed that additional attributes of its prevailing market rate lodestar include that, unlike the *Johnson* approach, the lodestar calculation is "objective", [Hensley v. Eckerhart](#), 461 U.S. 424, 76 L.Ed.2d 40, 103 S.Ct. 1933 (1983) at 433, and "thus cabins the discretion of trial judges, permits meaningful judicial review, and produces reasonably predictable results" *Perdue v. Kinney*, 539 U.S. ---- (2010) Slip Opinion p. 7; see also [Spell v. McDaniel](#), 824 F.2d 1380, 1403 (4th Cir.1987)(The "prevailing market rate may be established through affidavits reciting precise fees that counsel with similar qualifications have received in comparable cases; information concerning recent fee awards by courts in comparable cases; and specific evidence of counsel's actual billing practice or other evidence of the actual rates which counsel can attract in the market."). The Supreme Court also has held

that after the lodestar is calculated, the courts must presume that factors such as novelty and complexity of the issues, special skill and experience of counsel, quality of representation, and results obtained are already considered to be included in the lodestar, and should generally not be used as enhancement factors. *Id.* In sum, total attorney compensation under [Section 330](#) is determined by adding (1) the prevailing market rate lodestar; (2) a potential enhancement; and (3) expenses.

B. Prevailing Market Rates for OBHT

87. The Court finds that the relevant community that the Court should consider when determining the reasonableness of attorneys fees for OBHT pursuant to Section in these Chapter 11 Cases is a national market and, more particularly, asbestos-related bankruptcy cases involving an FCR pursuant to [Section 524](#). The evidence and record in this case confirms the national scope of the Debtor's business and assets; the national scope of its creditor base; the national scope of its environmental issues involving not only the United States Department of Justice but numerous states as well; the national scope of its 100,000k current asbestos claimants and their counsel; the international scope of the Debtor's ownership and litigation related thereto; and, the national scope of the diverse law firms throughout the United States which have been involved in this case.

*22 88. Unlike other law firms in these Chapter 11 Cases, OBHT did not conduct an analysis of the prevailing market of FCR counsel when setting the billing rates of its attorneys. Instead, as Mr. Tate testifies, OBHT set its rates at the lower end of the range of the local firms that it considered its primary competition. OBHT's market is the greater San Antonio area, which does not see a large volume of national bankruptcy cases. Moreover, the rates of OBHT's non-bankruptcy lawyers who provided vital services to the FCR are set based on the market for services in similar disciplines in the local San Antonio legal market. Despite billing at hourly rates artificially suppressed by a local legal market, all OBHT lawyers provided comparable legal services to those services provided by lawyers in this and other national cases. Both Mr. Tate and Mr. Battaglia testified that OBHT had not previously represented a party in case similar to the ASARCO Cases.

1. Hourly Rates for Counsel in these Chapter 11 Cases

89. During the Fee Hearings, the Court took judicial notice of all pleadings filed in these Chapter 11 Cases, which include the all interim compensation applications of (i) Reed Smith, counsel for the ASARCO Committee; (ii) Fulbright Jaworski, local and special counsel for the ASARCO Committee; (iii) Baker Botts, counsel for the Debtors; and (iv) SBEP, counsel for the Asbestos Committee ("*Case Law Firms*"). The interim compensation applications of these Case Law Firms contain the hourly rates for all attorneys who performed services in these Chapter 11 Cases.

2. Hourly Rates for FCR Counsel in Asbestos-Related Bankruptcies

90. OBHT also conducted an analysis of its attorneys' rates as compared to the specific market of FCR counsel. OBHT compared its rates to other law firms who served as counsel to future claims representatives in asbestos-related chapter 11 cases from **2005-2009**.

91. OBHT's standard rates are below the prevailing market rate for FCR Counsel.

92. In considering the nature, the extent and the value of services, taking into account all relevant factors, the Court finds that the standard hourly rates for OBHT attorneys in these Chapter 11 Cases to be less than the prevailing market rate for such similar FCR Counsel services in **2005, 2006, 2007, 2008 and 2009**.

93. In considering the nature, the extent and the value of services, taking into account all relevant factors including result obtained, the Court finds that the services provided to the estates and to the Future Claimants by OBHT attorneys were reasonable and necessary. The Court finds that the prevailing market rate for Court-approved professionals in national, asbestos-related bankruptcy cases evidenced by the billing rates of comparably-skilled practitioners in these Chapter 11 Cases is higher than the OBHT attorneys' standard hourly rates for **2005, 2006, 2007, 2008 and 2009**.

C. Prevailing Market Rates for the FCR

94. The Court finds that the relevant community that the Court should consider when determining the reasonableness of attorneys fees pursuant to Section in these Chapter 11 Cases is a national market and, more particularly with respect to the FCR and his counsel, asbestos related bankruptcy cases involving a Future Claims Representative pursuant to [Section 524](#). The evidence and record in this case confirms the national scope of the Debtor's business and assets; the national scope of its creditor base; the national scope of its environmental issues involving not only the United States Department of Justice but numerous states as well; the national scope of its 100,000k current asbestos claimants and their counsel; the international scope of the Debtor's ownership and litigation related thereto; and, the national scope of the diverse law firms throughout the United States which have been involved in this case.

1. Hourly Rates of FCRs in Asbestos-Related Bankruptcies

*23 95. The FCR presented ample and uncontroverted evidence to the Court showing that only a select few individuals in the United States have been retained to fill the specialized role of the FCR a chapter 11 bankruptcy case. Accordingly, the Court finds that the relevant market to consider prevailing market rates for Judge Pate is that market comprised of those cases which required the services of a future claims representative pursuant to [11 U.S.C. 524](#) considered separately for **2005, 2006, 2007, 2008 and 2009**, as admitted into evidence.

96. The FCR's standard hourly rate for all services provided to this case in **2005** and **2006** was \$300.00 per billed hour; for all services provided in **2007** and **2008** in this case was \$350.00 per billed hour; and, for all services provided from January 1, **2009** through December 9, **2009** in this case was \$350.00 per billed hour. The FCR filed fourteen interim fee applications in the subsidiary cases and four interim fee applications in the ASARCO, LLC case and, in each instance, informed this Court that the rates being charged for his services was a normal rate without consideration of size and degree of responsibility, difficulty and complexity.

97. On January 1, **2007**, the FCR increased his hourly rate from \$300.00 to \$350.00. The FCR's standard hourly rate for services as the FCR to the Debtors from and after December 9, **2009** through the date of the evidentiary hearing on this Fee Application is \$450.00 per billed hour.

98. All standard hourly rates charged by Robert C. Pate were below the rates for professionals of similar legal experience and training and were below the average market rate for professionals serving as future claims representatives in other cases pursuant to [11 U.S.C. 524\(g\)](#). Reorganized ASARCO offered no controverting evidence.

99. The ASARCO, LLC Asbestos Personal Injury Settlement Trust Agreement contains at Paragraph 6.5 the allowance of fees to be paid to a future class "at the Future Claims Representative's standard billing rate up to \$550 per hour."

100. The ASARCO, LLC Asbestos Personal Injury Settlement Trust Agreement is in the form and content as proposed by its plan proponents--the Parent--and approved by this Court and adopted, approved and confirmed by the United States District Court.

101. In order to calculate the prevailing market rate for Future Claims Representatives, the FCR provided the Court an analysis comparing his hourly billing rates for the relevant time and period to the hourly billing rates of other professionals who served as future claims representatives in asbestos-related chapter 11 cases from **2005-2009**.

102. The FCR Rates Chart evidenced that Judge Pate's standard rates were below the prevailing market rate. The range of standard hourly rates for FCRs in other asbestos-related Chapter 11 cases in **2005** is from \$200.00 to \$765.00 per hour; in **2006** is from \$210.00 to \$795.00 per hour; in **2007** is from \$275.00 to \$795.00 per hour; in **2008** is from \$320.00 to \$845.00 per hour; and in **2009** is from \$320.00 to \$890.00 per hour. The average of the standard hourly rates for FCRs in other asbestos related Chapter 11 cases in **2005** is \$442.08; in **2006** is \$441.05; in **2007** is \$489.00; in **2008** is \$462.08; and in **2009** is \$507.73.

***24** 103. In considering the nature, the extent and the value of services, taking into account all relevant factors, the Court finds that the standard hourly rate for Judge Pate in these Chapter 11 Cases to be less than the prevailing market rate for such similar services in **2005, 2006, 2007, 2008** and **2009** when

considered in light of the uncontroverted evidence of the market rate for services of future claims representatives in other asbestos-related cases during the relevant time period.

104. In considering the nature, the extent and the value of services, taking into account all relevant factors including result obtained, the Court finds that the services provided to the estates and to the Future Claimants by Judge Pate in performance of his fiduciary duties as the FCR were reasonable and necessary.

105. The Court finds that the customary and necessary compensation charged by comparably skilled practitioners in cases which required the services of an FCR pursuant to [Section 524](#) is, on average, higher than Judge Pate's standard hourly rate charged in these Chapter 11 Cases for **2005, 2006, 2007, 2008** and **2009**.

106. Judge Pate's total hours billed for services in this jointly administered case as Future Claims Representative for **2005** is 352.45 hours; for **2006** is 565.65 hours; for **2007** is 1,153.5 hours; for **2008** is 1,212.25 hours; and for **2009** through December 9, **2009** is 968.1 hours.

D. Enhancement

107. Both the FCR and OBHT request that the Court award an enhancement based on the outcome in this case. This Court set out in detail in the Memorandum on the Final Fee Application of Baker Botts the criteria for enhancement and adopts those findings here. While the work performed by the FCR and OBHT was exceptional, an award based upon their total hours cannot be justified. The outcome of this bankruptcy--100% payment of all creditors with interest--was both unforeseen as well as rare and exceptional. However, such outcome was due to a coalescence of factors, including the following:

- A well-timed and substantial rise in copper prices in **2009**;
- The SCC Judgment;
- The Parent's desire to retain ownership and control of ASARCO LLC and move to a full-payment plan;
- The Parent's strong desire to bring an end to the costly, time-consuming and distracting litigation involving the environmental claims and asbestos claims;
- This Court and how this Court conducted the case; and
- Other participants, constituents, professionals, and attorneys.

108. There is no question that the work of the asbestos fiduciaries was primarily responsible for the settlement of the alter ego lawsuit which provided one billion dollars for the creditors of the asbestos subsidiaries. This result is remarkable when viewed in light of the difficulties in investigating the lawsuit, the age of and massive number of documents reviewed, and the legal difficulties associated with prosecuting an alter ego lawsuit. The asbestos fiduciaries, after thoroughly reviewing millions of documents, used their legal abilities, expertise in bankruptcy law (especially Section 523(g)), and impeccable timing to achieve the remarkable settlement. A trial or even estimation of this lawsuit could

have left the subsidiary Debtors with no assets. The outcome obviously provided tangible benefit to the subsidiary Debtors.

*25 109. Accordingly, a 10% enhancement in the hourly rate of the hours worked on the alter ego lawsuit is appropriate. Based upon the hours billed by OBHT on the alter ego lawsuit, an enhancement of \$409,976.60 is appropriate. Based upon the hours billed by the FCR for the alter ego lawsuit, an enhancement of \$58,040.42 is appropriate.

VIII. Summary of Findings and Conclusions

191. Based on the foregoing findings, the record and proceedings in these Chapter 11 Cases, and the evidenced introduced and arguments presented in the Applications and at the Hearing, the Court specifically supplements the extensive findings herein above and further finds as follows as to the FCR and OBHT, together and individually:

192. The time spent by the FCR and OBHT on their services as set forth in their Applications was reasonable and necessary.

193. The services of the FCR and OBHT in these Chapter 11 Cases were necessary to the administration of, or beneficial at the time at which the services were rendered toward the completion of a case under this title.

194. The services of the FCR and OBHT in these Chapter 11 Cases were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed.

195. The FCR and OBHT have demonstrated skill in the bankruptcy field.

196. The questions involved in these Chapter 11 Cases were novel, complex and difficult.

197. The amounts involved and the results obtained provided extraordinary value to the Future Claimants, the estates of the Asbestos Subsidiaries, and the estates of the collective Debtors.

198. The FCR and OBHT had to make themselves primarily available for these Chapter 11 Cases to the preclusion of other employment.

199. The FCR and OBHT had the requisite experience, reputation and ability.

200. The FCR and OBHT have billed at standard hourly rates that are lower than other comparable attorneys who have performed similar work in comparable cases.

201. These Chapter 11 Cases were mass-tort bankruptcy cases with a national scope and presented extraordinarily complex issues.

202. The relevant community for consideration of prevailing market rates are those Chapter 11 cases pending during the application period requiring the services of a future claims representative pursuant to [11 U.S.C. 524](#).

203. The standard hourly rates charged by the FCR and OBHT for their services are reasonable, but they are below the prevailing market rates charged by comparable attorneys who perform similar work in comparable cases.

204. The FCR and OBHT have billed at respective standard hourly rates in these Chapter 11 Cases that are demonstrably lower the prevailing market rate, i.e. the rates of other comparable attorneys who performed similar work in comparable cases.

205. The OBHT Applications and their underlying invoices and statements have sufficient detail and accuracy.

206. The OBHT Applications and their underlying invoices and statements are not improperly lumped.

***26** 207. OBHT did not improperly use multiple attorneys in the services performed in these Chapter 11 Cases.

208. OBHT did not request compensation for services clerical or administrative in nature.

209. OBHT did not unnecessarily duplicate the work of any other professionals in these Chapter 11 Cases and all services described in the OBHT Applications provided a material benefit to the estates in these Chapter 11 Cases.

210. The Objections of Reorganized ASARCO and Parent to the Applications of the FCR and OBHT are overruled.

211. The hourly rate charged by the FCR for all services to prosecute the FCR Applications and all supplements thereto after December 9, **2009** is reasonable.

212. The FCR's and OBHT attorneys' standard hourly rates for the services related to the Derivative Asbestos Claims upwardly adjusted by 10 percent are less than the FCR's and OBHT's "true market value," as demonstrated by the rates of comparable attorneys who have performed similar work in comparable cases.

213. Reasonable compensation for OBHT's services and actual and necessary expenses is as follows:

Period	Fees	Expenses
Pre-Plan Effective Date (Pre Dec. 9, 2009)	\$10,187,728.50	\$647,076.67
10% Enhancement of Fees Related to Derivative Asbestos Claims	\$409,976.60	
Post-Confirmation (Post Dec. 9, 2009)		
Services Related to Final Fee Application	\$302,423.00	\$23,624.18
Services Related to Enhancement Application	\$229,386.25	\$28,257.44
Post-June 28, 2010		
Services Related to Final Fee Application	\$25,000.00	\$2,500.00
Services Related to Enhancement Application	\$25,000.00	\$2,500.00
	TOTAL \$11,179,514.35	\$703,958.29

214. Reasonable compensation for the FCR's services and actual and necessary expenses is as follows:

Period	Fees	Expenses
Pre-Plan Effective Date (Pre Dec. 9, 2010)	\$1,442,277.50	\$73,680.39
10% Enhancement of Fees Related to Derivative Asbestos Claims	\$58,040.42	
Post-Confirmation (Post Dec. 9, 2010)		
Services Related to Final Fee Application	\$81,290.22	\$4,925.33
Services Related to Enhancement Application	\$26,178.90	\$5,163.90
	TOTAL \$1,607,787.04	\$83,769.62

215. In the event of an appeal OBHT and the FCR may file a supplemental fee application.

IX. Construction

216. To the extent appropriate, findings of fact set forth above shall be deemed to be conclusions of law, and conclusions of law shall be deemed to be findings of fact.

X. Conclusion

193. Counsel for OBHT and the FCR shall submit a proposed order in conformance with the Court's Findings of Fact and Conclusions of Law within ten (10) days from the date below.

Slip Copy, 2011 WL 2975716 (Bankr.S.D.Tex.)

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