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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
JUL 31 1996
ROBERT H. SHEMWELL, CLERK
BY DEPUTY

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	Civil Action No. CV 95-2115S
Plaintiffs	§	JUDGE TOM STAGG
v.	§	MAGISTRATE JUDGE PAYNE
ATLANTIC RICHFIELD COMPANY,	§	
Defendant	§	

STATEMENT OF UNCONTESTED FACTS IN SUPPORT OF CRYSTAL EXPLORATION AND PRODUCTION COMPANY'S MOTION FOR SUMMARY JUDGMENT

Crystal Exploration and Production Company, pursuant to Local Rule 2.09, submits the following statement of the material facts as to which it contends that there is no genuine issue of material fact:

Introduction

1. In 1995, defendant, Atlantic Richfield Company ("ARCO"), notified Crystal Oil Company ("Crystal") and Crystal Exploration and Production Company ("CEPCO") that it intended to seek recovery of environmental cleanup costs at the Rico-Argentine mine (the "Rico mine") in Dolores County, Colorado (the "ARCO Environmental Claim").

2. The mine was formerly owned by CEPCO, a wholly owned subsidiary of Crystal.

3. On November 30, 1995, Crystal and CEPCO filed suit in this Court asking for a declaration that they have no liability to ARCO for remediation of the mine.

uncontest

4. On March 6, 1996 ARCO counterclaimed, asserting claims against plaintiffs under CERCLA.

5. On July 19, 1996, this Court referred the Bankruptcy Discharge Issue to the Bankruptcy Court. *See* July 19, 1996 Memorandum Ruling, Appendix, Tab 18.

History Of Ownership Of The Rico Mine

6. Beginning in the early 1900s, a Utah corporation named Rico-Argentine Mining Company conducted mining operations in and near Rico, Colorado. 1996 Voluntary Cleanup Plan Application for the Argentine Tailings Site at 2-2, Appendix, Tab 15.

7. CEPCO, a wholly-owned subsidiary of Crystal, became the owner of the Rico mine in 1977 through a series of corporate mergers. Crystal itself never owned the mine. CEPCO owned the mine for approximately three years.

8. In June 1978, Anaconda, a wholly-owned subsidiary of ARCO, entered into an option agreement with CEPCO to explore and possibly purchase the Rico mine. *See* June 1, 1978 Agreement and Amendment No. 1 thereto (the "Option Agreement"), Appendix, Tab 1.

9. Anaconda bought the mine on August 27, 1980, through a letter agreement and a Closing Agreement, both signed that summer. *See* June 17, 1980 letter agreement and August 27, 1980 Closing Agreement, Appendix, Tabs 7 and 10.[1/] *See also* ARCO's Responses to Request for Admissions at No. 1, Appendix, Tab 19.

[1/] On the same day, the parties also executed a Quitclaim Deed and a Mining Deed, Appendix, Tabs 11 and 12. Also on the same day, the Option Agreement was terminated by an Acknowledgement of Termination in conjunction with such purchase on August 27, 1980. *See* August 27, 1980 Acknowledgement of Termination, Appendix, Tab 13.

10. Anaconda later merged into ARCO. (All references hereafter are therefore to ARCO, which includes its predecessors and successors). ARCO's Responses to Request for Admissions at No. 2, Appendix, Tab 19.

The Parties' Agreement Concerning Responsibility
For Post-Closing Cleanup Liability

11. The Closing Agreement expressly addressed the allocation of environmental responsibilities relating to the former mining operations.

12. The Closing Agreement states that ARCO assumed full responsibility for all water permit penalties, enforcement actions, and other costs, including post closing cleanup:

> Anaconda shall be solely and fully responsible for any and all compliance requirements imposed, in response to permit violations which occur either before or after August 27, 1980, by either the Colorado Department of Health or EPA, including, without limitation, clean-up orders or the installation of pollution control facilities, devices, plans, or programs. In no event shall Crystal be liable for or subject to, either direct or indirectly, any such compliance costs or requirements.

Closing Agreement at ¶ 3(c), Appendix, Tab B.

13. Furthermore, ARCO and CEPCO expressly agreed that CEPCO would have no post-closing responsibility, other than those responsibilities specified in the agreement:

> Crystal shall not be subject to any further obligations or responsibilities with respect to the properties involved in this transaction subsequent to closing, except as otherwise specified in this Closing Agreement.

Id. at ¶ 12(d), Appendix, Tab B.

14. The parties "specified" just one exception to ARCO's assumption of environmental liabilities in the Closing Agreement. The parties being aware of certain water permit violations, agreed that CEPCO would be responsible only for pre-closing violations up to a maximum of $30,000.00. *Id.* at ¶ 3(a), Appendix, Tab B.

15. During its negotiations with CEPCO to purchase the Rico mine, ARCO documented its intention to assume environmental liability, internally estimating at the time of purchase that assumption of post-closing cleanup liability would most likely cost ARCO in excess of $15 million. *See, e.g.*, Authorization for Expenditure and Summary of Justification, Appendix, Tab 8.

16. ARCO agreed to purchase the Rico mine from CEPCO for $4.5 million. However, it took into account as part of its costs of purchase a $15.4 million cost estimate for environmental rehabilitation. Justification, Authorization for Commitment, Rico Project, Colorado at p. 9, Appendix, Tab 9.

17. ARCO's current cleanup plan, for which it seeks contribution from CEPCO, is designed to stabilize the tailings ponds and prevent surface water runoff of pollutants from the mining tailings. 1996 Voluntary Cleanup Plan Application for the Argentine Tailings Site at 2-3, 2-12 through 2-13, Appendix, Tab 15.

18. These are the exact environmental liabilities identified in the 1979 CDM Report, the report prepared for ARCO to identify environmental liabilities in anticipation of purchasing the Rico mine. CDM Report, Appendix, Tab 5.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in compliance with the Federal Rules of Civil Procedure, on this 31st day of July, 1996, a copy of the above and foregoing has been served on counsel for Defendant, Atlantic Richfield Company, by placing a copy of same in the United States mail, properly addressed and with adequate postage affixed thereon to:

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