CT Corporation

Service of Process Transmittal

06/20/2013
CT Log Number 522964155

TO: Stephen Young, Group Counsel & Secretary
Xstrata Nickel
100 King Street West, Suite 6900, PO Box 403
Toronto, ON M5X 1E3

RE: **Process Served in Delaware**

FOR: NORANDA MINING INC. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Asarco LLC, etc., Pltf. vs. Noranda Mining, Inc., etc., Dft.
DOCUMENT(S) SERVED:	Summons, Proof of Service, First Amended Complaint, Certificate of Service
COURT/AGENCY:	United States District Court - District of Utah, UT Case # 212CV00527TCDBP
NATURE OF ACTION:	A complaint is seeking for an order to pay contribution to the Plaintiff for the expenses incurred for the release or disposal of hazardous substance in the site
ON WHOM PROCESS WAS SERVED:	The Corporation Trust Company, Wilmington, DE
DATE AND HOUR OF SERVICE:	By Process Server on 06/20/2013 at 15:19
JURISDICTION SERVED :	Delaware
APPEARANCE OR ANSWER DUE:	Within 30 days after service, not counting the day of service
ATTORNEY(S) / SENDER(S):	Gregory Evans Parr Brown Gee & Loveless, P.C. 185 South State Street Suite 800 Salt Lake City, UT 84111 801-532-7840
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex International Priority , 796063024074 Email Notification, Jonathon H Vinocur jonathon.vinocur@thompsonhine.com Email Notification, Stephen Young syoung@xstratanickel.ca
SIGNED:	The Corporation Trust Company
PER:	Melanie McGrath
ADDRESS:	1209 Orange Street Wilmington, DE 19801
TELEPHONE:	302-658-7581

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT

for the

District of Utah

ASARCO LLC, a Delaware corporation, Plaintiff	)	
v.	)	Civil Action No. 2:12-cv-00527-TC-DBP
NORANDA MINING, INC., a Delaware corporation, Defendant	)	

Summons in a Civil Action

To: *(Defendant's name and address)*

NORANDA MINING, INC.
THE CORPORATION TRUST COMPANY
1209 ORANGE STREET
WILMINGTON, DE 19801

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Gregory Evans
James G. Warren
Integer Law Corporation
633 West 5th Street, 67th Flr., Los Angeles, CA 90071

Steven J. Christiansen
David C. Reymann
Parr Brown Gee & Loveless, P.C
185 South State Street, Suite 800, Salt Lake City, UT 84111

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 06/18/2013

United States District Court SUMMONS District of Utah

D. Mark Jones
Name of clerk of court

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____, by:

(1) personally delivering a copy of each to the individual at this place, _____
_____; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____ who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____; or

(4) returning the summons unexecuted to the court clerk on _____; or

(5) other *(specify)* _____
_____
_____.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Print Save As... Export Import Reset

Gregory Evans (California SBN 147623)
Pro Hac Vice
James G. Warren (California SBN 231788)
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Attorneys for Plaintiff Asarco LLC

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ASARCO LLC, a Delaware corporation, Plaintiff, v. NORANDA MINING, INC., a Delaware corporation, Defendant.	Case No.: 2:12-cv-00527 **FIRST AMENDED COMPLAINT** Judge Tena Campbell Magistrate Judge Dustin Pead

ASARCO LLC ("Asarco") complains of Defendant and alleges:

NATURE OF THE ACTION

1. This is a civil action brought by Asarco pursuant to CERCLA for contribution against Defendant for costs incurred by Asarco at the Richardson Flats/Park City Mining District ("the Site") in Summit County, Utah. Asarco has recently paid over $10 million to settle all of its CERCLA-related liability at the Site. These Settlements included costs to cleanup and control contamination that cannot be associated with Asarco's historic mining activities, but can only have come from the Defendant's facilities.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and this Defendant, pursuant to 28 U.S.C. §§ 1331 and 1367(a), and Section 113 of CERCLA, 42 U.S.C § 9613.

3. Venue is proper in this judicial district pursuant to 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) because the claims arose, and the threatened and/or actual releases of hazardous substances occurred within the District of Utah, Central Division.

PLAINTIFF

4. Asarco is a limited liability company organized under the laws of the state of Delaware. Asarco has taken responsibility for the cleanup of all of its known liabilities for any "releases" under CERCLA Section 107(a), et seq., 42 U.S.C. § 9607(a), *et seq.*, for Asarco's historic mining operations at the Site, and Asarco has settled all of its liability at the Site with the United States.

DEFENDANT

5. Noranda Mining, Inc. ("Noranda") is a corporation organized under the laws of the state of Delaware with its principal place of business in the state of Idaho and certain other operations in the state of Ohio. Noranda leased and operated a mining facility in Summit County, Utah at the Site. Correspondingly, Noranda is liable for the costs of remediating releases of hazardous substances at the site pursuant to Section 107(a) of CERCLA.

6. Noranda knew or should have known of the existence and nature of this action within 120 days from its filing, and that it would have been named as the Defendant in this action but for Asarco's mistake.

7. In particular, due to a mistake, Asarco named a related corporate entity—Xstrata, PLC ("Xstrata")—as Defendant in its initial Complaint. That mistake was caused by the similarity in names between "Noranda Mining, Inc.", and a related entity, "Noranda Inc." Noranda Inc. merged with a company then known as Falconbridge, Ltd. (now known as "Xstrata Nickel") in approximately 2005, and the combined Noranda Inc./Falconbridge, Ltd. entity was acquired by Xstrata in 2006. These corporate transactions led Asarco to believe—based on its initial misnomer—that Xstrata was the proper party in interest.

8. The initial Complaint was filed on June 5, 2012, and Xstrata filed its first document in the case—a motion for extension of time to answer—on August 24, 2012. Xstrata, therefore, was fully advised of the premises of this lawsuit not more than 80 days from the date of filing.

9. Noranda's president, one P. Shaw, is also the president of an Xstrata subsidiary named Norfalco Inc. Shaw's office address is an office building in Ohio, which also houses the officers and agents of at least one other Xstrata subsidiary.

10. In 2006, EPA brought an enforcement action against Noranda related to its CERCLA liability at the Site. The same counsel that represented Noranda in that matter, Mr. John D. Fognani, represents Xstrata in the instant suit.

SITE DESCRIPTION AND FACTUAL BACKGROUND

11. The Richardson Flats/Park City Mining District ("Richardson Flats") site (the "Site") comprises several areas. The Richardson Flats Tailings Impoundment is located 1.5 miles northeast of Park City, Utah, and is part of a 650-acre property owned by the United Park City Mines Company ("UPCM"). The tailings impoundment covers approximately 160 acres in the northwest corner of the UPCM property in the Upper Silver Creek Watershed. The tailings impoundment is listed in the United States Environmental Protection Agency Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS"). The site identification number for the tailings impoundment is UT980952840.

12. In addition to the tailings impoundment, the Site includes the Ontario #3 mine, the Keetley Drain Tunnel, portions of the Lower Silver Creek Area, a slurry line, and other associated mine workings.

13. Defendant Noranda, and/or its predecessors and successors, owned and operated and/or continues to own and operate a facility in the vicinity of the Site and these operations have released and contributed lead and/or arsenic to the environment at the Site. Specifically,

Noranda Mining leased and operated the Keeley Ontario Mine, and/or other mining properties, at the Site during approximately 1979 to 1981.

14. On August 9, 2005, Asarco filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

15. On September 23, 2008, Asarco filed a motion in the Bankruptcy Court for approval of a settlement pursuant to CERCLA whereby Asarco would pay certain private parties $1,450,000 to resolve certain CERCLA and contractual liabilities at the Site ("Richardson Flats Site Private Settlement"). The Richardson Flats Site Private Settlement was approved by the Bankruptcy Court on October 17, 2008.

16. On March 12, 2009, Asarco filed a motion in the Bankruptcy Court for approval of a settlement pursuant to CERCLA whereby Asarco would pay environmental regulators $7,400,000 million to resolve its CERCLA liabilities at the Site ("Richardson Flats Site Government Settlement").[1] That motion was approved by the Bankruptcy Court on June 5, 2009.

17. Neither of the settlements described in Paragraphs 10 or 11 (collectively "the Settlements") could be funded until a plan of reorganization for Asarco was confirmed and effective.

[1] The Richardson Flats Site Government Settlement was bundled with a number of other CERCLA settlements with environmental regulators that are not pertinent to the claims asserted herein.

18. Similarly, the amount that Asarco would actually be required to pay pursuant to the Settlements was not certain until a plan of reorganization for Asarco was confirmed and effective.

19. On November 13, 2009, Asarco's plan of reorganization, under which Asarco would make full payment on its environmental claims as approved by the Bankruptcy Court, was approved by the District Court for the Southern District of Texas.

20. On December 9, 2009, Asarco's plan of reorganization became effective, enabling disbursal of funds for environmental settlements, including funds for the Settlements. Asarco fully funded the Settlements at one hundred cents on the dollar, plus all interest that accrued during the bankruptcy case, as part of its reorganization. Thus, the Settlements constitute judicially approved settlements stemming from enforcement action taken pursuant to Section 106 or Section 107 of CERCLA.

21. Combined, the Settlements fund a cleanup at the Richardson Flats Site that addresses fully all of the Asarco waste, as well as other harmful substances governed under CERCLA and released by Defendant during its ownership or operation of facilities at the Site or near or adjacent to the Site.

COUNT I
CLAIM FOR CONTRIBUTION UNDER SECTION 113(f) OF CERCLA

22. Plaintiff incorporates by reference paragraphs 1 through 21 as if fully set forth herein.

23. The Site and surrounding areas, are "facilities" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of, placed, released, or otherwise became located in the Site at times relevant to this action by Defendant.

25. Defendant is responsible for disposals or "releases" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) into the environment at or from the Site at times relevant to this action.

26. Defendant is liable under Section 107(a) of CERCLA because it owned or operated a facility at which such hazardous substances were disposed. 42 U.S.C. § 9607(a)(2).

27. Defendant is liable under Section 107(a) of CERCLA if the person arranged, by contract or otherwise, with a transporter for transport or disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances. 42 U.S.C. § 9607(a)(3).

28. Defendant is liable under Section 107(a) of CERCLA if the person accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs. 42 U.S.C. § 9607(a)(4).

29. Defendant is a person who is liable for owning and/or operating facilities at or from which hazardous substances were disposed under 42 U.S.C. § 9607(a)(2), for arranging transport or disposal of hazardous substances under 42 U.S.C. § 9607(a)(3), and/or transporting hazardous substances in or near the Site, under 42 U.S.C. § 9607(a)(4).

30. Asarco has resolved CERCLA liability for response action with the United States through the judicially approved bankruptcy reorganization and may seek contribution pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

31. To date, when including interest, Asarco has incurred approximately $10,413,646.19 for response action consistent with the NCP pursuant to 42 U.S.C. § 9607(a)(4)(B). This amount represents more than Plaintiff's allocable share of costs related to its releases or disposal of hazardous substances in the Site.

32. Because Defendant qualifies as responsible party under CERCLA § 107(a), Defendant is liable under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for its equitable share in contribution to Asarco's Settlements.

33. WHEREFORE, Plaintiff respectfully requests that judgment be entered in its favor and against Defendant:

- Ordering Defendant to pay contribution to Plaintiff in a sum to be determined by the Court to be owed to Plaintiff for response costs;
- Awarding Plaintiff its costs and attorneys' fees; and
- Awarding Plaintiff all other relief that the Court deems appropriate.

Respectfully submitted,

Dated: June 18, 2013

By: /s/ Gregory Evans
Gregory Evans (Admitted Pro Hac Vice)
James G. Warren (Admitted Pro Hac Vice)

Steven J. Christiansen
David C. Reymann
Cheylynn Hayman
PARR BROWN GEE & LOVELESS, P.C.

Attorneys for Plaintiff Asarco LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of June 2013, I filed the foregoing **FIRST AMENDED COMPLAINT** via the CM/ECF system, which electronically served the following:

Phillip William Lear
LEAR & LEAR LLP
808 East South Temple
Salt Lake City, Utah 84102

John D. Fognani
Kendall R. McLaughlin
Paul G. Buchmann
FOGNANI & FAUGHT, PLLC
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Denver, Colorado 80202

By: /s/ Gregory Evans
Gregory Evans