United States of America
v.
Asarco Incorporated et al.
Civil Action No. 96-0122-N-EJL

Expert Accounting Report of William M. Kime CPA

August 23, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	)	
	)	Civil Action No. 96-0122-N-EJL
Plaintiff,	)	Civil Action No. 91-0342-N-EJL
	)	
v.	)	
	)	
ASARCO INCORPORATED, et al	)	
	)	
Defendants.	)	
	)	
AND CONSOLIDATED CASE	)	
	)	

EXPERT REPORT OF WILLIAM M. KIME

I, WILLIAM M. KIME, pursuant to 28 U.S.C. § 1746, and based on my personal knowledge, declare and state the following:

I. Background

I am a Certified Public Accountant and a shareholder in the consulting firm of Rubino & McGeehin, Consulting Group, Inc. ("R&M").

R&M is under contract with the United States Department of Justice ("DOJ") Environment and Natural Resources Division ("ENRD") to assist in the accumulation, processing and reporting of information relating to costs incurred by the ENRD in the prosecution of cases under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund"), as amended. The contract commenced with the accumulation of costs for Fiscal Year 1988 (beginning October 1, 1987) and continues through the present.

I am the officer/shareholder responsible for the work performed by R&M on behalf of ENRD concerning costs incurred by ENRD relating to the DJ Number 90-11-3-128L. I have over 23 years of experience in public accounting. Throughout my career I have been heavily involved in providing audit and consulting services to federal government contractors. Moreover, I have over 15 years of experience reviewing costs incurred by the ENRD in connection with response actions under CERCLA. All work performed by staff members of R&M relating to the aforementioned review of DOJ cost documentation relating to the DJ Number 90-11-3-128L was performed under my supervision and control. I have knowledge of all procedures undertaken by R&M in recording and calculating costs of attorneys and paralegals, as well as other related costs incurred by ENRD relating to CERCLA cases. I am being compensated at a rate of $195/hour.

In the course of our accumulations of ENRD Superfund costs, R&M summarizes the direct labor costs, other direct costs, and related indirect charges incurred by ENRD under each CERCLA case. R&M assisted in the design of the procedures used to accumulate the costs relating to CERCLA cases. The procedures used to assign and allocate costs to specific cases are based on generally accepted accounting principles, including references to cost allocation guidelines outlined in Federal Acquisition Regulations and Cost Accounting Standards.

II. DOJ Costs

R&M has accumulated, summarized, and reported costs for all Superfund cases up to and including August 31, 2003. The costs which ENRD has incurred and paid are segregated into three areas. Those areas are: Direct Labor Costs, Other Direct Costs, and Indirect Costs, as more fully described below.

a. Direct Costs

Direct Labor Costs of attorneys and paralegals are calculated using information summarized from daily time information prepared by ENRD employees and bi-weekly salary information supplied to R&M by ENRD. R&M uses all hours (including non-case hours and both Superfund and non-Superfund case hours) accounted for by a particular employee for a bi-weekly period and the employee's bi-weekly salary cost to calculate an effective hourly rate for that period. For example, if an attorney's bi-weekly salary was $4,000 and the attorney accounted for 100 hours that bi-weekly period, the effective hourly rate would be $40. This hourly rate is then multiplied by the hours the employee worked on a case to calculate the cost of direct labor for that case for that period.

Other Direct Costs are expenses specifically identified to a case through ENRD's accounting system. These items include, but are not limited to, costs paid for travel, expert witnesses, special masters, deposition and trial transcripts, and litigation support costs.

b. Indirect Costs

In addition to the directly identifiable costs associated with Superfund and other ENRD cases, there are indirect costs incurred by ENRD, which support all ENRD cases, both Superfund and non-Superfund. The indirect costs are the types of costs that are incurred to support the functioning of ENRD attorneys during their performance on individual cases. Specifically, these indirect costs include, but are not limited to, indirect labor (e.g., attorney and paralegal administrative time, secretarial support, accounting support, record keeping, and time keeping), compensated absences (e.g., vacation, holiday, and sick time), fringe benefits, office space and utilities, supplies, and training.

The indirect costs are allocated to all individual cases through the use of an indirect cost allocation system designed by R&M. The indirect cost rate is calculated by dividing the total of the aforementioned indirect costs for a fiscal year by a base consisting of the total ENRD direct labor costs for that fiscal year (i.e., the cost of attorney and paralegal labor for both Superfund and non-Superfund cases) to produce a division-wide indirect cost rate by fiscal year. Thus, if .5% of the total ENRD direct labor costs are incurred on a particular case, then .5% of the total ENRD indirect costs would be allocated to the case.

Through the development and application of the indirect cost rate, only a fraction of ENRD's indirect costs are allocated to Superfund cases. As an example, in fiscal year 1999, $39,270,963, or 72%, of the total indirect costs were allocated to non-Superfund cases.

III. Opinion and Conclusions

The accumulation and reporting of the costs relating to the case of United States v. Asarco Inc., et al., were performed in the normal course of our contract with ENRD. Based on the R&M system of accumulating costs as described above for costs incurred through August 31, 2003, I have prepared a summary of ENRD's costs relating to DJ Number 90-11-3-128L. The summary reflects total costs of $16,722,973.63 and is attached as Exhibit 1 hereto. However, additional costs have been and will continue to be incurred in connection with this case.

In my opinion, the system described above and as applied in this case results in the accurate reporting of the direct costs incurred by DOJ-ENRD, and a fair and reasonable allocation of indirect costs.

IV. References

The documents I have relied on in forming these opinions are:

a. Billing Summaries prepared by R&M, Fiscal Years 1996 - 2003.

b. Office of the Inspector General Audits of ENRD, Fiscal Years 1996-2001.

c. Timesheets, Time Reports prepared by ENRD and Time by Attorney/Paralegal Reports, invoices, contracts, task orders, travel authorizations and other supporting documents.

A copy of my resume, including a list of cases in which I have testified as an expert in the last four years, is attached to this report.

I, William M. Kime, declare under penalty of perjury that the foregoing is true and correct. Executed August 23, 2004.

Date 8/23/04

William M. Kime

U.S. v. ASARCO, INC.
SUMMARY OF COSTS INCURRED BY THE
DEPARTMENT OF JUSTICE/ENVIRONMENT AND
NATURAL RESOURCES DIVISION

DOJ CASE NO.: 90-11-3-128L

FISCAL YEAR ENDED	DIRECT LABOR COSTS	OTHER DIRECT COSTS	INDIRECT COSTS	TOTAL
09/30/96	$ 201,562.30	$ 45,350.75	$ 472,451.15	$ 719,364.20
09/30/97	619,873.76	429,948.09	1,450,158.71	2,499,980.56
09/30/98	499,006.06	744,680.62	1,135,512.24	2,379,198.92
09/30/99	653,043.13	1,124,146.48	1,495,415.22	3,272,604.83
09/30/00	634,438.93	1,304,470.06	1,367,453.17	3,306,362.16
09/30/01	849,089.16	1,055,167.77	1,788,928.97	3,693,185.90
09/30/02	161,643.01	209,578.72	359,840.29	731,062.02
09/30/03 *	35,470.09	8,865.55	76,879.40	121,215.04
Total Cost	$ 3,654,126.44	$ 4,922,208.04	$ 8,146,639.15	$ 16,722,973.63

*** Costs are through August 31, 2003.**

WILLIAM M. KIME
Personal Resume

Mr. Kime is a shareholder/partner in Rubino & McGeehin Consulting Group, Inc. Since joining Rubino & McGeehin in 1981, Mr. Kime has over 23 years of experience in providing audit and consulting services to a wide variety of clients, in addition to managing litigation support and consulting activities.

Mr. Kime currently provides litigation support and consulting services to private law firms, large corporations, construction contractors, and government contractors. These services include assistance to businesses for the estimation and calculation of claim damages resulting from a change in contract requirements or late exercise of contract options, and review of available documentation, pricing of damages, and preparation of the claim for submission. His experience also includes assessing the adequacy of accounting systems and records of private companies and governmental units; developing cost allocation methods; providing expert testimony on specific cost accounting issues; and assisting in negotiation of contracts and disputes. He has implemented computer based cost accounting systems, for both private and public owners including the system used to accumulate DOJ costs for Superfund cases and he has provided assistance to contractors for pre-award, cost incurred and final close-out Government audits.

Mr. Kime is extensively involved with environmental cost recovery actions being prosecuted by the U.S. Department of Justice. As part of these efforts, he provides consultation to various government agencies (e.g., the U.S. Department of Justice and the U.S. Environmental Protection Agency) on a variety of cost accounting and financial matters, including reviewing the adequacy of accounting systems and supporting documentation; analyzing and preparing allocations of costs to sub-sites or responsible parties; and providing expert testimony on specific cost issues. He has provided these services in over fifty environmental cases. In addition to his litigation support services, Mr. Kime assisted in the development of and provides on-going maintenance for a computerized database used by the Department of Justice for case cost reporting.

Mr. Kime has also worked in the area of construction claim pricing and analysis. As part of these efforts, he provides consultation to both construction contractors and owners on a variety of cost accounting and financial matters, including reviewing the adequacy of accounting systems and supporting documentation; analyzing and preparing allocations of costs; and providing expert testimony on specific cost issues. Issues under consideration in these claims have included labor costs; labor burdens; inefficiencies; equipment costs; material and subcontractor costs; field and home office overhead; and lost profits. He has provided these services in over forty construction claims.

The public owners which Mr. Kime has worked for include the U.S. Department of Justice and the States of Maryland, Pennsylvania, and South Carolina. Mr. Kime has also provided claim pricing and analysis services for large (such as Harbert International, Foster Wheeler, Ogden Inc., Clark Construction, Inc., and Raytheon Inc.) and small construction contractors (including Concrete Safety Systems, Inc. and John J. Kirlin, Inc.).

WILLIAM M. KIME
Personal Resume

EDUCATION

- BS Accounting, University of Scranton (May 1981)
- Specialized training

PROFESSIONAL CERTIFICATIONS

- Certified Public Accountant

RELEVANT EXPERIENCE

- Public Accounting Practice and Management Consulting
- Expert Testimony and Litigation Support
- Extensive Involvement in Environmental Cost Recovery Actions
- Audits and reviews of Government Contractors Financial Statements and Accounting Systems
- Analysis of and Preparation of Claim Damages
- Lecturing Experience

PROFESSIONAL AFFILIATIONS/MEMBERSHIPS

- American Institute of Certified Public Accountants
- Maryland Association of Certified Public Accountants

WILLIAM M. KIME
Listing of Expert Testimony in the Last Four Years

Plaintiff	Defendant	Testimony	Forum
United States of America	Dupont Chemical	Testimony	United States District Court (April 2004)
United States of America	JG-24, Inc.	Testimony	United States District Court (March 2004)
Granite Management	*United States of America*	-	Mediation (March 2004)
Specialized Services, Inc.	*Upper Oconee Basin Water Authority*	-	Mediation (February 2004)
Engineered Products, Inc.	*Interstate Ironworks, Inc.*	Testimony	Arbitration (December 2003)
United States of America ex Rex A. Robinson and James H. Holzrichter	Northrop Grumman Corporation	Deposition	United States District Court (April 2003)
Medlar Electric, Inc.	*Parkland School District*	Testimony	American Arbitration Association (Oct. 2002)
United States of America	William M. Gurley	Testimony	United States District Court (July 2002)
Utility Engineering Corp.	Mountbatten Surety Co.	Testimony	Arbitration (March 2002)
Lockheed Martin	*United States of America*	-	Mediation (November 2001)
Mace Electric and Blumenthal-Kahn JV	*Stormont Hospitality Group, LLC*	-	Mediation (Sept. 2001)
Rado Enterprises, Inc.	*Parkland School District*	Testimony	American Arbitration Association (June 2001)
United States of America	Tropical Fruit, Inc.	Deposition	United States District Court (May 2001)
United States of America	Chrysler Corporation	Deposition	United States District Court (March 2001)
Delle Data Systems	*Maryland Department of Human Resources*	Testimony	Maryland State Board of Contract Appeals (January 2001)
Cajun Constructors, Inc	Watkins Engineering	Testimony	American Arbitration Association (October 2000)
United States of America	Montrose Chemical Co.	Deposition	United States District Court (June 2000)

Italics indicates client in the case.

WILLIAM M. KIME
Listing of Expert Testimony in the Last Four years

Plaintiff	Defendant	Testimony	Forum
United States of America	Caldwell Trucking Co.	Deposition	United States District Court (June 2000)
BAER Construction Services, Inc.	*Montgomery County, Maryland*	Testimony	Dept. of Public Works-Hearing (April 2000)
Bayport Pipeline, Inc.	*MFS Network Technologies, Inc.*	Testimony	American Arbitration Association (April 2000)
Kentucky Bridge & Dam	*United States of America*	-	Mediation (September 1999)
State Farm Insurance Co.	*Clark Construction Co.*	Deposition	United States District Court (April 1999)

Italics indicates client in the case.