

## **Feds Ink \$33M Enviro Deal With Defunct Magnesium Cos.**

*By Dave Simpson*

Law360 (July 15, 2019, 9:40 PM EDT) -- More than 18 years after accusing two now-defunct magnesium companies of polluting at a production facility in Utah, federal agencies announced Monday that they've reached a settlement under which the companies' trustee and others will fund a \$33 million cleanup.

Under the deal with the trustee to Magnesium Corporation of America and Renco Metals Inc., the U.S. will score bankruptcy claims in the amount of \$82.1 million, which is expected to yield about \$28 million toward remediation. Another \$5.8 million is expected to come from the current operator of the magnesium production facility, US Magnesium LLC.

"Polluters will be held to account, even in bankruptcy, for contaminating the environment," U.S. Attorney Geoffrey S. Berman of the Southern District of New York said in a release. "As a result of today's settlement, MagCorp and Renco Metals will pay more than \$33 million to fund cleanup of the hazardous substances at the US Magnesium Superfund Site."

The U.S. sued MagCorp and Renco in January 2001, claiming that MagCorp, which was then the largest magnesium producer in the country, created ditches of polluted run-off on a site adjacent to the Great Salt Lake as a result of its production. MagCorp's facility in Tooele County, Utah, was designated a Superfund site in 2009.

"If approved by the court, the funding recovered through this settlement will be used to reclaim and restore access to 58,000 acres of BLM-managed public lands, which were damaged and abandoned by MagCorp over two decades ago," Department of the Interior Secretary David Bernhardt said in a release.

The deal was filed in New York federal bankruptcy court, and will remain there for at least 30 days before being reviewed by the court for approval. Federal government initially sued in Utah federal court.

MagCorp and Renco Metals declared bankruptcy in August 2001, claiming causes ranging from a \$900 million pollution lawsuit by the U.S. Environmental Protection Agency and brutal competition from magnesium producers in Asia.

The suit from the federal government, and the bankruptcy that followed, spurred nesting dolls of litigation.

Bankruptcy trustee Lee Buchwald sued Renco Group in 2003, alleging that it arranged to transfer funds out of its subsidiaries Renco Metals and Magnesium Corp. of America to other business entities in 1996 and 1997.

Buchwald alleged that Renco looted MagCorp instead of using the money to mitigate its environmental liabilities and comply with new environmental regulations.

In February 2015, following a four-week trial, a jury found that the transfers were fraudulent and ordered the return of \$101 million from Renco and \$17.2 million from its billionaire owner Ira Rennert. The jury also leveled \$1 million in punitive damages against Renco. With interest, the award came to \$214 million, according to court records.

That result, in turn, caused Renco Group to sue its attorneys from the Buchwald case, alleging in its complaint that the lawyers with Kaye Scholer LLP, which has since merged with Arnold & Porter to become Arnold & Porter Kaye Scholer LLP, failed to object to the verdict before the jury was dismissed, cutting off any avenue to challenge the panel's decision as contradictory.

Renco and the attorneys moved to resolve that suit in June 2018.

The government is represented by Christine S. Poscablo and Robert William Yalen of the Office of the United States Attorney for the Southern District of New York.

Counsel for the trustee was not immediately known.

The bankruptcy case is In Re: Magnesium Corporation of America, case number 1:16-cv-06844, in the U.S. District Court for the Southern District of New York. The civil suit is USA v. Magnesium Corp Amer, et al, case number 2:01-cv-00040, in the U.S. District Court for the District of Utah.

--Editing by Emily Kokoll.