

Cos. Urge Court To Toss Action Over Smelting Contaminants

By **Bill Wichert**

Law360, Newark (March 28, 2017, 4:18 PM EDT) -- Three companies urged a New Jersey federal court Tuesday to toss a putative class action brought against them by Carteret, New Jersey, residents over environmental contamination from a defunct smelting plant, claiming the lawsuit fails to specify the alleged conduct of each business and instead lumps the parties together.

U.S. Metals Refining Co., Freeport-McMoRan Inc. and Amax Realty Development Inc. said each company is in a different position with respect to the facility and the alleged acts span more than 100 years, but the factual allegations and the legal theories in the complaint are improperly asserted against “Defendants” as a group.

“In failing to differentiate among the Defendants, Plaintiffs’ Complaint fails to put each of the Defendants on notice of the claims against it,” according to the companies’ brief in support of their motion to dismiss the complaint. “For this reason, the Court should dismiss Plaintiffs’ Complaint.”

The lawsuit — filed on Jan. 30 in New Jersey state court and later removed to federal court by the defendants — alleges that the plaintiffs and their properties have been exposed to toxic and hazardous substances as a result of the smelting operations. Those materials include lead, arsenic and other contaminants, the lawsuit states.

The contamination causes a decline in the plaintiffs’ property values, deprives them of the free use and enjoyment of their properties and puts them at an increased risk of developing serious health problems, according to the lawsuit.

“Defendants have actively engaged in a campaign of concealment and misinformation concerning the nature and extent of the hazard posed by these contaminants, and have failed to timely warn the Carteret community concerning same, such that reasonable members of the community would be unaware of the presence, nature and extent of defendants’ contamination,” the lawsuit states.

The named plaintiffs are Leroy and Betty Nobles, and Juan and Betsy Duarte and their minor child, identified in the lawsuit as N.D.

The companies argued Tuesday, however, that the complaint only differentiates between the defendants in a section titled “Parties.”

That section states that U.S. Metals Refining operated the plant from the early 1900s until about 1991, and that Freeport-McMoRan acquired U.S. Metals Refining and its smelter operations. The section also claims that Amax owned or operated a portion of the site during the time in which the contaminants were released.

While the plaintiffs allege that only U.S. Metals Refining operated the facility, the complaint asserts that the “Defendants” wrongfully generated hazardous waste as a byproduct of the plant operations and that the plaintiffs and their properties were exposed to hazardous substances as a result of “Defendants' conduct,” according to the companies' brief.

The complaint also lumps the three companies together in claiming that the “Defendants” committed one or more acts or omissions, such as engaging in smelting operations in Carteret, wrongfully releasing toxic and hazardous waste, and wrongfully failing to properly remediate toxic and hazardous waste, according to the brief.

“The remainder of Plaintiffs' Complaint continues in this manner, referring only to 'Defendants' collectively, and failing to specify which acts each Defendant allegedly committed,” the brief states.

The plaintiffs' attorney, Steven J. German, told Law360 on Tuesday: “Defendants’ motion is peripheral to plaintiffs’ environmental injuries at the heart of this case. We will respond appropriately and expect the litigation to then proceed apace.”

Counsel for the defendants could not immediately be reached for comment Tuesday.

The plaintiffs are represented by Steven J. German of German Rubenstein LLP.

The defendants are represented by David R. Kott of McCarter & English LLP.

The case is Juan Duarte et al v. U.S. Metals Refining Co., case number 2:17-cv-01624, in the U.S. District Court for the District of New Jersey.

--Editing by Orlando Lorenzo.