

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Multidistrict Litigation Action No. 01:18—md—2824-WJ

***IN RE* GOLD KING MINE RELEASE IN SAN
JUAN COUNTY, COLORADO, ON AUGUST 5,
2015.**

(This MOTION relates to all cases.)

**MOTION OF DEFENDANT HARRISON WESTERN CONSTRUCTION
CORPORATION TO DISMISS STATE OF UTAH AND
ENVIRONMENTAL RESTORATION, LLC’S CLAIMS**

Defendant Harrison Western Construction Corporation (“Harrison Western”) moves now to dismiss the claims of plaintiff State of Utah (“Utah”) and cross-claimant/third party plaintiff Environmental Restoration, LLC (“ER”) pursuant to Federal Rule of Civil Procedure 12(b)(2) (**Fed.R.Civ.P. 12(b)(2)**). In support thereof, Harrison Western states as follows:

The underlying actions stem from the Gold King Mine spill near Silverton, Colorado, on August 5, 2015. (EXHIBIT A - State of Utah First Amended Complaint at ¶¶ 1, 60-62). The spill involved approximately 3,000,000 gallons of contaminated water and toxic waste, which traveled into nearby Cement Creek, into the Animas River, into the San Juan River and, finally, into Lake Powell. (*Id.* at ¶ 61). Following the spill and in response to certain “environmental, economic and other damage” (*id.*

at ¶ 62), Utah brought various statutory and common law tort claims against Harrison Western and others (*id.* at ¶¶ 64-129) demanding declaratory, monetary and injunctive relief.¹ (*Id.* at PRAYER FOR RELIEF).

ER is a defendant in each of the lawsuits that comprise the MDL, except the action commences by Utah.² ER has asserted claims against Harrison Western in each case of the MDL for contribution on all claims asserted against ER in the MDL. (ER Crossclaim Against Harrison Western [MDL DOC. 218-1 at 31-34]; ER Third-Party Complaint Against Harrison Western [MDL DOC. 214-1 at 43-46]; ER Third-Party Complaint Against Harrison Western [MDL DOC. 213-1 at 48-52]; ER Third-Party Complaint Against Harrison Western [MDL DOC. 210-1 at 23-24]; ER Third-Party Complaint Against Harrison Western [MDL DOC. 209-1 at 92-93]).

¹Utah has sued Harrison Western Corporation, and Utah served its initial complaint upon Harrison Western Corporation. (EXHIBIT E – State of Utah Proof of Service). Harrison Western Corporation, however, did not perform any work or services in connection with the Gold King Mine; Harrison Western Construction Corporation did (although it did not perform work on or around the date of the subject incident). (EXHIBIT B – Declaration of Christopher A. Hassel at ¶ 7). Moreover, and while separate legal entities, both Harrison Western Corporation and Harrison Western Construction Corporation maintain the same principal place of business in Lakewood, Colorado. (*Id.* at ¶ 8). Accordingly, Harrison Western Construction Corporation has notice of the underlying complaint. (*Id.* at ¶ 8).

²Utah and ER recently settled. At present, then, ER is no longer a defendant in that action, but remains a cross-claimant by virtue of its cross-claim against HW.

RELIEF SOUGHT AND GROUNDS THEREFOR

Harrison Western broadly contends it has no liability to Utah or ER because there is no factual or legal basis for any of the claims directed against it. At this time, however, Harrison Western contends that New Mexico and Utah courts lack personal jurisdiction because Harrison Western is a Colorado corporation with a principal place of business in Colorado and because the claimed damages did not result from any intentional conduct by Harrison Western expressly aimed at the State of New Mexico or the State of Utah.

BACKGROUND

A. Harrison Western Is A Colorado Corporation With A Principal Place Of Business In Colorado.

Harrison Western is an experienced and expert mining services subcontractor. (EXHIBIT A at ¶ 12). Harrison Western is a Colorado corporation. (*Id.* at ¶ 12). Harrison Western's principal place of business is in Lakewood, Colorado. (*Id.* at ¶ 12). It has had no other principal place of business. (EXHIBIT B at ¶ 6). Harrison Western's headquarters are also in the State of Colorado. (*Id.* at ¶ 6). It has never had headquarters outside the State of Colorado. (*Id.* at ¶ 6).

All Harrison Western's executive and administrative functions occur within the State of Colorado; none have occurred in any other state. (*Id.* at ¶ 6). All

Harrison Western's corporate officers live and reside in the State of Colorado; none live or reside elsewhere. (*Id.* at ¶¶ 1-4).

B. Harrison Western's Revenue And Work In The Forum States.

From 2009 through 2019, Harrison Western has generated revenue on projects in the State of New Mexico and the State of Utah. However, that revenue has been limited and has not been more than 10% of Harrison Western's total revenue over that time period.

From 2009 through 2019, Harrison Western worked on the following projects in New Mexico:

- ICP Ochoa Polyhalite Shaft and Slope Study (work began in March 2011 and concluded in September 2011);
- Intrepid Potash East Shaft (work began June 5, 2013 and concluded September 12, 2013);
- Intrepid Potash - West Mine Main (work began November 9, 2015 and concluded October 16, 2016);
- Intrepid East Mine (work began September 15, 2015 and concluded December 4, 2016);
- Intrepid Potash - East Production Shaft Guide Change Out (work began in May 2018 and concluded in June 2018); and,
- ASL Vault (work began in November 2017 and concluded March 2018). (EXHIBIT C – Harrison Western's Third Supplemental Responses to Environmental Restoration, LLC's Special Interrogatories, Set One at 3-4).

From 2009 through 2019, Harrison Western worked on the following projects in Utah:

- Winter Quarters Canyon Ventilation Slope, Skyline Mine (work began in May 2011 and concluded in February 2013);
- Blackjack Gazex Installation (work began August 22, 2016 and principal work concluded in January 2017/warranty work began in October 2019, and concluded on October 10, 2019); and,
- Park City Mine Tunnel Reconstruction (work began July 1, 2019 and concluded December 31, 2019). (*Id.* at 5-6).

From 2009 through the end of 2019, Harrison Western earned revenue on the above projects in the State of New Mexico amounting to \$2,209,682 and on the above projects in the State of Utah amounting to \$ 9,182,612.35. (*Id.* at 15). Comparatively, over the same time period, Harrison Western earned revenue on projects in the State of Colorado amounting to \$74,634,265, revenue on projects in the State of Kansas amounting to \$14,581,773, and revenue on projects in the State of West Virginia amounting to \$11,179,137. (*Id.* at 14-15).

C. Harrison Western's Role And Involvement With The Gold King Mine.

All the work performed by Harrison Western in connection with the Gold King Mine was undertaken in Colorado or was intended to be undertaken in Colorado at the mine. (EXHIBIT B at ¶ 9).

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