

OCT 24 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STATE OF ARIZONA; TERRY L.
GODDARD, Attorney General for the
State of Arizona; ARIZONA
DEPARTMENT OF LAW, Civil Rights
Division,

Plaintiffs - Appellees,

ANGELA AGUILAR,

Intervenor-Plaintiff -
Appellee,

v.

ASARCO LLC,

Defendant - Appellant.

No. 11-17484

D.C. No. 4:08-cv-00441-MWB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Mark W. Bennett, District Judge, Presiding

Argued and Submitted June 12, 2013
San Francisco, California

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Before: O'SCANNLAIN and HURWITZ, Circuit Judges, and SINGLETON,
Senior District Judge.**

Appellant ASARCO challenges the district court's decision in admitting certain testimony and in awarding attorneys fees. We address ASARCO's challenge to the constitutionality of the punitive damages award in an opinion filed concurrently with this memorandum disposition. The relevant facts are discussed in that opinion. *See Arizona v. ASARCO LLC*, – F.3d — (9th Cir. 2013).

ASARCO challenges the district court's admission of testimony related to two other incidents of sexually explicit graffiti at the mill. The district court found that this evidence was probative with regard to ASARCO's failure to remedy similar conduct affecting Aguilar and that this outweighed any prejudicial effect. The authorities cited by ASARCO do not demonstrate clear error in that finding.

ASARCO also challenges the district court's imposition of \$350,902.75 in attorneys fees. ASARCO argues that the district court clearly erred in determining that Aguilar achieved excellent results. In light of Aguilar's success in obtaining a significant punitive damages award and the injunctive relief in Aguilar's favor, this finding was not clear error.

AFFIRMED.

** The Honorable James K. Singleton, Senior District Judge for the U.S. District Court for the District of Alaska, sitting by designation.