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## Phelps Dodge will answer to local folks on smelter case

Submitted by Korina Schneider on September 9, 2009 - 1:24pm

**BLACKWELL** – A class action lawsuit filed on behalf of Blackwell residents will remain in Kay County as hoped by attorneys from Texas and Oklahoma who filed the case.

Attorneys from Nix, Patterson & Roach, LLP, said Tuesday in a press release that keeping the Blackwell smelter case in Kay County is a substantial victory for an environmental-cleanup lawsuit filed by their clients – a group of Blackwell residents – against Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, Burlington Northern Santa Fe Railway and other defendants.

The U.S. Court of Appeals for the Tenth Circuit in Denver, Colo., issued an order Friday returning the class action suit to state court in Kay County, where the plaintiffs originally filed it in April 2008.

The decision by the Court of Appeals concludes a lengthy series of attempts made by the defendants to have the case heard by a jury outside the community of Blackwell.

The attempts began soon after the lawsuit was initially filed in Kay County, when the defendants removed the case to a federal court in Oklahoma City.

The federal judge who heard the matter refused the request, ordering the case back to Kay County. The defendants sought to have the federal judge's order overturned by the Court of Appeals.

Now that the judge's decision has been signed, sealed and delivered, Freeport-McMoRan officials said they will have to honor it.

"We respect the court's decision," said Freeport-McMoRan External Communications Manager James Telle Tuesday on behalf of the company. "We are confident that the facts of the case will vindicate the company in whatever courtroom it is heard."

According to the lawsuit, Freeport and the other defendants are responsible for 58 million pounds of lead, arsenic, cadmium and other toxins that now contaminate the homes, businesses, schools and public spaces of Blackwell.

The suit demands that the defendants thoroughly clean all contaminated property, reimburse residents for lost property values and provide for a public medical-monitoring program.

"This is a significant win for the people of Blackwell," said Nelson Roach, a partner with Nix, Patterson & Roach in Daingerfield, Texas, and one of the attorneys representing the plaintiffs. "This town has been contaminated for decades, and local residents deserve to play a greater role in the cleanup. Sadly, though, census estimates show that more than 100 children have been born in Blackwell



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