

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

**OUTBOARD MARINE CORPORATION,
et al.,**

Debtors.

**In Proceedings for the Liquidation
of a Corporation**

Chapter 7 (Converted)

**Case No. 00-37405
(Substantively Consolidated)**

Hon. John H. Squires

**STIPULATION OF SETTLEMENT CONCERNING
THE OUTBOARD MARINE CORPORATION WAUKEGAN HARBOR SITE**

Alex D. Moglia, not individually, but solely as chapter 7 trustee (“Trustee”) for Outboard Marine Corporation (“OMC”) and its related debtor entities (collectively, “Debtors”), and the United States of America (“United States”) stipulate and agree as follows:

WHEREAS, OMC, since its inception in 1936, owned and operated facilities throughout the United States that manufactured, sold, and distributed recreational marine products, including boats and outboard engines. OMC’s corporate headquarters operations at 90-100 Sea Horse Drive, Waukegan, Lake County, Illinois were conducted on a 124-acre property adjacent to Waukegan Harbor and Lake Michigan (“OMC Site”);

WHEREAS, in 1989, OMC and the United States (hereafter, “Parties”) entered into a Consent Decree relating to the OMC Site, United States and the State of Illinois v. Outboard Marine Corp., Civ. No. 88 C 8571 (N.D. Ill.);

WHEREAS, on December 22, 2000 (“Petition Date”), the Debtors filed voluntary petitions for reorganization in the United States Bankruptcy Court for the Northern District of

Illinois, Eastern Division (“Bankruptcy Court”) for relief under chapter 11 of the Bankruptcy Code;

WHEREAS, the Debtors’ cases were converted to chapter 7 proceedings on August 20, 2001, the Trustee was duly appointed on August 24, 2001, and the Debtors’ bankruptcy cases were substantively consolidated on March 11, 2003;

WHEREAS, on May 3, 2002, the United States on behalf of U.S. EPA and the State of Illinois on behalf of Illinois EPA filed an Adversary Proceeding, United States and State of Illinois v. Moglia, Adv. Pro. No. 02A00577 (“Adversary Proceeding”), which sought injunctive relief against the Trustee to enforce, inter alia, compliance with federal and state environmental regulations;

WHEREAS, in July 2002, the United States, on behalf of the Environmental Protection Agency, the State of Illinois, on behalf of the Illinois Environmental Protection Agency, and the Trustee, on behalf of the Debtors’ estates, entered into a Settlement Agreement (“First Settlement Agreement”), which permitted the Trustee to abandon Plant 2 at the OMC Site upon the completion of specified work and making of a required payment but reserved the parties’ rights and defenses with respect to the Adversary Proceeding. The Trustee completed the required work and made the payment (as modified by later supplemental agreement) and the Bankruptcy Court authorized the abandonment of Plant 2 by Order dated December 10, 2002;

WHEREAS, on November 15, 2002, the U.S. EPA filed a proof of claim (“U.S. Claim”) in the Bankruptcy Case seeking the recovery of environmental response costs incurred or obligated, or that will be incurred or obligated, by U.S. EPA at certain OMC facilities;

WHEREAS, on November 15, 2002, Illinois EPA and the Illinois Department of Natural Resources (“Illinois DNR”) filed a proof of claim (“Illinois Claim,” and together with the U.S.

Claim, "Proofs of Claim") in the Bankruptcy Case seeking recovery of environmental response costs incurred or obligated by Illinois EPA under the Illinois Act at certain OMC facilities;

WHEREAS, the Bankruptcy Court entered a Second Settlement Agreement on March 1, 2005 ("Second Settlement Agreement") that resolved the Proofs of Claim;

WHEREAS, neither the First Settlement Agreement nor the Second Settlement Agreement addressed any outstanding claims for damages for injury to, destruction of, or loss of natural resources resulting from hazardous substance releases at the OMC Site ("Natural Resource Damages") of the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA") and the United States Department of The Interior ("DOI") against the OMC Estate;

WHEREAS, the United States alleges that the OMC Estate is liable for certain Natural Resource Damage costs for assessment of injuries to, destruction of, or loss of natural resources and for Natural Resource Damages under the trusteeship of NOAA and DOI in connection with releases of hazardous substances during the bankruptcy case from the then property of the OMC Estate located at and around 90-100 Seahorse Drive, Lake County, Waukegan, Illinois to sedimentary and fishery resources and supporting ecosystems, including, but not limited to, Lake Michigan. NOAA and DOI have incurred these costs after the Debtor's chapter 11 bankruptcy petition and converted chapter 7 proceedings were initiated. The United States contends that the OMC Estate is liable for such assessment costs and Natural Resource Damages under Section 107 of CERCLA, 42 U.S.C. § 9607(a)(4)(C), as current owner or operator of a facility or as past owner and operator of a facility at the time of disposal pursuant to Section 107(a)(1), (2) of CERCLA, 42 U.S.C. § 9607(a)(1), (2);

WHEREAS, the United States alleges that NOAA and DOI have incurred post-petition Natural Resource Damages assessment costs of \$90,899.00 and \$56,848.00, respectively, in connection with the OMC Site and that Natural Resource Damages are significant;

WHEREAS, the Trustee contends that it has no liability for federal Natural Resource Damages and assessment costs at the OMC Site, but desires to resolve any and all outstanding claims that the United States may have for Natural Resource Damages and assessment costs;

WHEREAS, the Parties hereto, without admission of liability by any Party, desire to settle, compromise and resolve the United States' Claims for Natural Resource Damages and assessment costs;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the Parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. In settlement of the United States' claims, on behalf of NOAA and DOI, relating to Natural Resource Damages and assessment costs under CERCLA, the Trustee shall pay the United States on behalf of DOI \$56,848, and the United States on behalf of NOAA \$90,899 as allowed administrative expenses of the estate. The total payment of \$147,747 shall be made within ten days after the approval of this Settlement Agreement (provided that such approval is not stayed) by the Bankruptcy Court. Payment shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice ("U.S. DOJ") account in accordance with current electronic funds transfer procedures, referencing the case name and the DOJ case number 90-11-3-07051/2. Payment shall be made in accordance with instructions provided to the Trustee by the Financial Litigation Unit of the United States Attorney's Office

for the Northern District of Illinois. Any EFTs received at the U.S. DOJ lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day. The Trustee shall also send notice that such payment has been made to: the U.S. Department of Justice, NOAA and the DOI at the addresses indicated in Paragraph 9. The filing of this Settlement Agreement shall be deemed to constitute an application for and stipulation by the Parties hereto of an administrative expense without the need for any separate filing therefore.

2. In consideration of the payments or distributions that will be made by the OMC Estate under the terms of this Settlement Agreement, and except as provided in Paragraph 3, the United States, on behalf of NOAA and DOI, covenants not to bring a civil action, or take administrative action, or file any claim or request for payment or injunctive or other relief against the Debtor's Estate for Natural Resource Damages and assessment costs pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, relating to the OMC Site. This covenant not to sue is conditioned upon the complete and satisfactory performance by the OMC Estate of its obligations under this Settlement Agreement. This covenant not to sue extends only to the OMC Estate and does not extend to any other person.

3. The covenant not to sue set forth in the previous Paragraph does not pertain to any matters other than those expressly specified in the previous Paragraph. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to claims based on a failure by the Debtor to meet a requirement of this Settlement Agreement.

4. This Settlement Agreement fully resolves all monetary and non-monetary causes of action, claims, rights, and remedies, at law or in equity, including injunctive relief of whatever character and priority, that the United States, on behalf of NOAA and DOI

may have, or may claim to have, now or in the future, against the Trustee and the OMC Estate for Natural Resource Damages. The United States, on behalf of NOAA and DOI, understand and agree that the Trustee is specifically relying on the representations made by the United States in this Paragraph in making his decision to seek approval of this Settlement Agreement from the Bankruptcy Court, and but for the representations of the United States in this Paragraph, the Trustee would not seek such approval.

5. With regard to claims for contribution against the OMC Estate for matters addressed in this Settlement Agreement, the Debtor is entitled to such protection from any contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

6. The OMC Estate covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to Natural Resource Damages and assessment costs for the OMC Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out or response activities relating to Natural Resource Damages and assessment costs for the OMC Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

7. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

8. Debtor's entry into this Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. Debtor agrees to exercise its best efforts to obtain the approval of the Bankruptcy Court.

9. If for any reason, (i) the Settlement Agreement is withdrawn by the United States or (ii) the Settlement Agreement is not approved by the Bankruptcy Court: (a) this Settlement Agreement shall be null and void and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value, and it shall be as if they had never been executed; and (d) this Settlement Agreement, any statements made in connection with settlement discussions, and any documents prepared in connection herewith may not be used as evidence in any litigation between the Parties.

10. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

For the U.S. Department of Interior:

Steven C. Barclay
Attorney/Advisor
Office of the Solicitor
U.S. Department of the Interior
Three Parkway Center, Room 385
Pittsburgh, PA 15220

For the National Oceanic & Atmospheric Administration:

Marguerite Matera
Senior Attorney
NOAA Office of General Counsel
One Blackburn Drive, Suite 205
Gloucester, MA 01930

For the U.S. Department of Justice:

Alan S. Tenenbaum
Francis J. Biros
Environmental Enforcement Section
Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044

For the Trustee of the OMC Estate:

Alex D. Moglia
Alex D. Moglia & Associates, Inc.
1325 Remington Road, Suite H
Schaumburg, IL 60173

And

Steven B. Towbin
Janice Alwin
Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC
321 North Clark Street
Suite 800
Chicago, IL 60610

11. The Bankruptcy Court shall retain jurisdiction over this matter for the purposes of interpreting, implementing and enforcing the terms and conditions of this Settlement Agreement.

12. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing

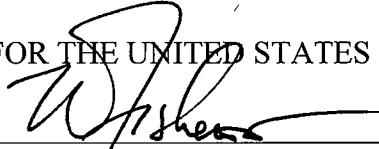
herein shall be deemed an admission of any fact or waiver of any right of either Party with respect to the matters contained herein.

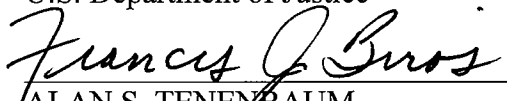
13. This Settlement Agreement represents the complete agreement of the Parties hereto on the specific matters referred to herein relating to Natural Resource Damanges and supersedes all prior agreements, understandings, promises and representations made by the Parties hereto concerning the subject matter hereof. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the Parties hereto and the approval of the Bankruptcy Court.

9/16/08
Date

9/16/08
Date

FOR THE UNITED STATES OF AMERICA:


W. BENJAMIN FISHEROW
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice


ALAN S. TENENBAUM
FRANCIS J. BIROS
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 10044-7611
(202) 514-5409

PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

JOEL R. NATHAN
Assistant United States Attorney
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604
(312) 353-5300

OF COUNSEL:

STEVEN C. BARCLEY

Steven C. Barclay

Attorney/Advisor

Office of the Solicitor

U.S. Department of the Interior

Three Parkway Center, Room 385

Pittsburgh, PA 15220

MARGUERITE MATERA

Senior Attorney

NOAA Office of General Counsel

One Blackburn Drive, Suite 205

Gloucester, MA 01930

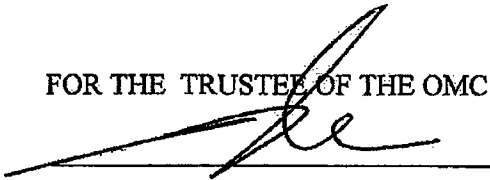
7/17/08

Date

7/17/08

Date

FOR THE TRUSTEE OF THE OMC ESTATE:



ALEX D. MOGLIA
Alex D. Moglia & Associates, Inc.
1325 Remington Road, Suite H
Schaumburg, IL 60173



STEVEN B. TOWBIN
JANICE A. ALWIN
Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC
Suite 800
321 North Clark Street
Chicago, IL 60610