

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between R. Lavin & Sons, Inc. ("Lavin" or the "Debtor"), and the United States, on behalf of the Environmental Protection Agency ("EPA"), the Department of the Navy ("Navy"), the Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA").

RECITALS

1. From at least 1941 until on or about July 18, 2001, Lavin operated a secondary refiner-smelter of non-ferrous metals on property and at facilities located at 2028 Sheridan Road, North Chicago, Illinois (the "Plant").
2. In 2001, Lavin's creditors filed an involuntary bankruptcy petition under Chapter 7 of the Bankruptcy Code which was later converted to a Chapter 11 re-organization in a case captioned: In Re: R. Lavin & Sons, Inc., Case Number 01-B-06301 (Bank: Ct. N. D. ILL.) (the "Bankruptcy Case").
3. On September 13, 2001, the Bankruptcy Court entered an order confirming the Post Confirmation Committee's ("Committee") Amended Liquidating Plan of Reorganization for Lavin for the liquidation of all of Lavin's assets under the direction of the Committee (the "Confirmed Plan"). Article VII, Section 7.04 of the Confirmed Plan authorizes the Committee to enter into this Agreement on behalf of Lavin.
4. On October 2, 2001, the United States, on behalf of EPA, DOI, NOAA, and the Navy (the "United States"), filed a proof of claim against Lavin for response costs and natural resource damages to which it was allegedly entitled pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.* These costs and damages were allegedly incurred due to the release of hazardous substances at the Plant (the "Sheridan Road Claim") and from the Plant to Pettibone Creek and eventually to the boat basin and harbors at the Naval Station Great Lakes (the "Navy Claim"). On November 15, 2001, the United States also filed a Request for Reimbursement of Chapter 11 Administrative Expenses. The United States filed an amended proof of claim and an amended request for reimbursement of administrative expenses on February 13, 2006 (collectively, the "U.S. Claims").
5. As part of the liquidation, Lavin is prosecuting litigation in the Circuit Court of Cook County, Illinois, captioned *R. Lavin & Sons, Inc. v. Liberty Mutual Insurance Company*, No. 00 CH 09038, pursuant to which Lavin seeks to recover damages from several insurance carriers ("Environmental Insurance Proceeds") related to insurance coverage

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for various alleged environmental liabilities under policies issued to Lavin (the "Insurance Litigation").

6. Lavin and the United States (jointly referred to as the "Parties") desire to settle, compromise and resolve the U.S. Claims and accordingly hereby enter into this Agreement which will become effective upon the date of approval by the Bankruptcy Court ("Effective Date").

PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

In settlement and satisfaction of the U.S. Claims, the Parties mutually agree as follows:

7. Subject to Bankruptcy Court approval and the terms of this Agreement, the Parties agree to allow without Objection a U.S. Claim for environmental damage in the Bankruptcy Case in the amount of \$9,000,000.00 (the "United States Allowed Claim"). Lavin will file its motion seeking court approval of this amount and this Agreement within 5 days of the signing of this Agreement.

8. Upon approval of this Agreement by the Bankruptcy Court, the United States shall be paid 38% of any future Net Environmental Insurance Proceeds recovered and received by Lavin within seven days of their receipt by Lavin. In addition, within 14 days of the Effective Date of this Agreement, the United States shall be paid 38% of the Net Environmental Insurance Proceeds recovered and received by Lavin from Lavin's recent settlement with Liberty Mutual Insurance Company. "Net Environmental Insurance Proceeds" shall mean those insurance proceeds remaining after deduction of litigation expenses as specified in Paragraph 22, but before distribution of any such proceeds to any other party including Lavin and MWRD. Eighty-nine percent of all Net Environmental Insurance Proceeds paid to the United States shall be used by the Navy, DOI, and NOAA, for the Navy Claim, and the remaining eleven percent shall be used by EPA for the Sheridan Road Claim. The Navy, DOI, and NOAA share shall be used for: (a) response actions at Pettibone Creek, the boat basin, and the inner harbor; and (b) actions to replace or acquire the equivalent of natural resources that have been injured in those areas, as mutually agreed by the Navy, DOI, and NOAA. Once the United States has received \$9,000,000.00 as its share of any Environmental Insurance Proceeds, the United States shall have no further right to recover any additional sums from any further Environmental Insurance Proceeds Lavin may obtain in the Insurance Litigation.

9. Lavin shall make payment as described in Paragraph 8 by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("U.S. DOJ") lockbox bank, referencing Case Number 90-11-3-07489/1, U.S.A.O. file no. 2001V700, in accordance with instructions provided by the United States to Lavin after execution of this Agreement. 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 U.S. DOJ will then transmit payment to NOAA, DOI, the Navy, and EPA as follows:

- a. A one-time payment to NOAA for past Natural Resource Damage Assessment costs in the amount of \$15,766.10 by EFT. Contact: Cathy Salter, (301) 713-3038.
- b. A one-time payment to DOI for past Natural Resource Damage Assessment costs in the amount of \$5,850.00 by EFT. Contact: Bruce Neslage, (202) 208-4093.
- c. After payment of NOAA and DOI past costs as described in Paragraphs 9.a. and b., the U.S. DOJ will transmit eighty-nine percent of the remaining funds recovered from Lavin to the Navy via check, made payable to "Environmental Restoration, Navy" and with a notation: "Payment for CERCLA costs in In Re: Lavin & Sons, Case No. 01-B-06301 (Bank. Ct. N.D. Ill.)." The check will be mailed to: Naval Facilities Engineering Command; Attn: ENC, Mr. Brian Harrison; 1322 Patterson Ave. SE, Ste. 1000, Washington Navy Yard, DC 20374-5065, with a copy to Mr. Perry Sobel, Navy OGC Litigation Office, 720 Kennon St. SE, Bldg. 36, Rm. 233, Washington Navy Yard, DC 20374-5013;
- d. After payment of NOAA and DOI past costs as described in Paragraphs 9.a. and b., the U.S. DOJ will transmit eleven percent of the remaining funds recovered from Lavin to EPA by EFT, referencing EPA Site ID No. B52E. The funds shall be sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is: "D 68010727 Environmental Protection Agency"

10. In the event that any payment required by Paragraph 8 is not made as specified, Lavin shall also pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

11. Lavin shall prosecute and use commercially reasonable efforts to obtain payment from its insurers for claims made under applicable insurance policies. Settlements by Lavin with insurers of any of such insurance claims shall require either prior consent of the United States or the approval of the Bankruptcy Court, on appropriate notice. Lavin agrees to document its use of commercially reasonable efforts to prosecute and obtain payment from its insurers under this Paragraph 11 by providing semi-annual correspondence to the United States regarding the current status of the insurance litigation and settlement discussions with all pertinent insurers. The first correspondence report will be due within 60 days after the effective date of this Agreement. Subsequent reports will be provided every 180 days thereafter until all pertinent insurance litigation has completed.

COVENANTS AND OTHER PROVISIONS

12. In consideration of the transfers, payments or distributions that will be made by Lavin, and the United States Allowed Claim, and except as specifically provided in this Agreement, the United States covenants not to bring a civil action or take administrative action against Lavin or the Committee pursuant to Sections 106 and 107 of CERCLA relating to the boat basin and harbors at the Naval Station Great Lakes (“NAVSTA Great Lakes”), the Plant, and Pettibone Creek. This covenant not to sue shall take effect upon the Effective Date of this Agreement and shall be conditioned upon the complete performance by Lavin and the Committee of its obligations under this Agreement. This covenant not to sue shall also apply to Lavin's successors and assigns, officers, directors, employees, trustees, and shareholders, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, trustee, or shareholder of Lavin is based solely upon its status as, and in its capacity as, a successor or assign, officer, director, employee, trustee, or shareholder of Lavin. This covenant not to sue shall not relieve any such entity of liability to the extent there is an independent basis under Paragraph 13 for CERCLA liability against said entity. This covenant not to sue does not extend to any other person, entity, or debtor, except as specifically set forth in this Paragraph, and in no way limits the reservation of rights by the United States set forth in Paragraph 13, below. Except as specifically provided in this Agreement, nothing in this Agreement affects any relief afforded to the Debtor under the Confirmed Plan.

13. 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 Agreement is without prejudice to, all rights against Lavin or the Committee with respect to all other matters, and specifically with respect to claims based on a failure by Lavin or the Committee to meet a requirement of this Agreement; a new act by Lavin or the Committee after the date of execution of this Agreement creating liability under Sections 106 or 107 of CERCLA for the Plant, Pettibone Creek, and the NAVSTA Great Lakes; and claims for any site other than the Plant, Pettibone Creek and the NAVSTA Great Lakes.

14. Except as provided in Paragraph 13, in consideration of the payments or distributions that will be made by Lavin under the terms of this Agreement, the United States waives its rights to any distributions or other assets of the Debtor's estate with respect to the Plant, Pettibone Creek or the NAVSTA Great Lakes, other than as described in this Agreement. This waiver is conditioned upon the complete performance by Lavin of its obligations under this Agreement.

15. The Parties agree, and by approving this Agreement the Bankruptcy Court finds, that Lavin and the Committee are entitled, as of the Effective Date of the Agreement, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. The “matters addressed” in this Agreement are response costs and natural resource damages incurred or to be incurred by the United States or any private party, in responding to the release and threatened release of hazardous substances at and from the Plant. The protection

provided under this Paragraph shall also apply to Lavin's successors and assigns, officers, directors, employees, trustees, and shareholders, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, trustee, or shareholder of Lavin is based solely upon its status as, and in its capacity as, a successor or assign, officer, director, employee, trustee, or shareholder of Lavin. This contribution protection shall not relieve any such entity of liability to the extent there is an independent basis under Paragraph 13 for CERCLA liability against said entity.

16. Lavin and the Committee covenant not to sue and agree not to assert any claims, causes of action, or defenses against the United States, with respect to the Plant, Pettibone Creek or the NAVSTA Great Lakes, including but not limited to past and future response costs, natural resource damages, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution or counterclaims against the United States, its departments, agencies or instrumentalities, and any claims, defenses, or counterclaims arising out of response activities at the Plant, Pettibone Creek or the NAVSTA Great Lakes.

17. By entering this Agreement, the United States, including but not limited to EPA, DOI, NOAA, and the Navy, assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Lavin or the Committee.

18. Nothing in this 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).

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

20. The United States and Lavin agree that the payments made hereunder do not constitute an admission of liability by the Debtor. The Debtor does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of any facts or allegations contained herein.

21. If Lavin or the Committee default in any of their obligations under this Agreement, the United States has the right to take action to require Lavin or the Committee to satisfy their obligations and cure any such default under this Agreement.

22. **Insurance Coverage Litigation.** Lavin will determine and pay the United States' 38% share of Net Environmental Insurance Proceeds from a particular insurer pursuant to Paragraph 8 by first deducting the corresponding sum listed below from the gross Environmental Insurance Proceeds. This deduction is intended as full compensation of Lavin for Lavin's insurance recovery litigation expenses against such insurer. There shall be no further deductions on account of litigation expenses with respect to Environmental Insurance Proceeds.

Liberty Mutual	\$50,000
Utica	\$50,000
Home	\$25,000
AMICO	\$10,000
All Others (each)	\$5,000

23. **Authority.** Each individual who executes this Agreement represents and warrants that he or she is authorized to sign this Agreement on behalf of the entity represented by that individual and to bind that entity to this Agreement and each of its provisions and that all necessary corporate and/or other approvals have been obtained.

24. **Complete Agreement.** This Agreement constitutes the entire agreement in understanding between all the Parties with respect to the subject matter in this Agreement and supersedes all other prior or contemporaneous oral agreements, understandings and negotiations of the Parties regarding this Agreement. This Agreement may be amended only by a writing signed by each party hereto or by an order of the Bankruptcy Court.

25. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall constitute an original. The Agreement shall take effect only when signed by all Parties and after the Bankruptcy Court's approval becomes final.

26. **Jurisdiction.** Lavin and the United States acknowledge and agree that the Bankruptcy Court shall have exclusive jurisdiction to enforce each and every term and condition of this Agreement, and hereby submit to the jurisdiction of the Bankruptcy Court for all purposes identified herein or otherwise in this Agreement.

27. **Contract Review.** All Parties hereto agree that this Agreement has been thoroughly reviewed by counsel of their respective choice and, in the event of an ambiguity or conflict in the terms hereof, there shall be no presumption against any of the Parties as the drafter hereof.

28. **Headings.** The paragraph headings used in this Agreement are for convenience only, and do not in any way limit, amplify, or affect the terms or conditions hereof.

29. **Severability.** If any provision of this Agreement shall be judicially determined to be unenforceable or invalid, the remainder of this Agreement shall be unaffected to the greatest extent possible.

30. **Court Approval.** This Agreement is subject to entry of an order in the Bankruptcy Case approving the settlement contained herein ("Settlement Order"). The Settlement Order shall state that the terms of the Settlement Order and the Settlement Agreement are binding upon the Debtor, its estate, all creditors and equity security holders of the Debtor, the Committee and its members, and all of their respective successors and assigns, including without limitation, any trustee subsequently appointed as a representative of the Debtor's estate in the Chapter 11 case, any trustee appointed in the Bankruptcy Case if it is converted to a Chapter 7 case and/or any trustee appointed in any subsequent proceeding against the Debtor under the Bankruptcy Code.



R. Lavin & Sons, by the Post Confirmation Committee, by its Chairman David Abrams

10/24/06

Dated



Post Confirmation Committee (currently consisting of the following members: James Aubuchon, Steve Safran, Toby Shine, David Abrams), by its Chairman David Abrams

10/24/06

Dated

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
(On behalf of the United States Environmental Protection Agency, the United States
Department of the Navy, the United States Department of the Interior, and the National
Oceanic and Atmospheric Administration of the United States Department of Commerce)

Dated