

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

In re

AM INTERNATIONAL, INC., et al.,

Debtor.

Chapter 11

Case No. 83 B 04922

**SETTLEMENT AGREEMENT BETWEEN AM INTERNATIONAL, INC.
AND THE UNITED STATES REGARDING FISHER CALO SUPERFUND SITE**

This Agreement is entered into by and between AM International, Inc. ("AM") and the United States of America, on behalf of the United States Environmental Protection Agency ("EPA") and the United States Department of the Interior ("DOI"), Akzo Coatings, Inc. ("Akzo") and O'Brien Corporation ("O'Brien") on this 9th day of May, 1996.

WHEREAS,

- A. On April 14, 1982, AM filed a petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Chicago Bankruptcy Court"), Case No. 82 B 04922 ("Bankruptcy Case 1");
- B. On September 6, 1983, EPA placed the Fisher Calo Chemical Company Superfund Site (the "Site" or "Fisher Calo Site") on the National Priorities List;
- C. On September 11, 1984, AM's amended plan of reorganization (the "Chicago Plan") was confirmed by the Chicago Bankruptcy Court in Bankruptcy Case 1;
- D. EPA completed a Remedial Investigation and Feasibility Study at the Site and adopted a final remedial action plan which is embodied in a Record of Decision signed on August 7, 1990;
- E. EPA has notified certain parties, including AM, of their potential liability at the Site;
- F. On or about December 26, 1991, a complaint was filed by the United States of America ("United States") against certain potentially responsible parties ("PRPs") who are members of the Fisher Calo RD/RA Site Group (the "Site Group") in the United States District

Court for the Northern District of Indiana, South Bend Division, in the matter known as *United States v. Accurate Partitions Corporation*, Case No. S91-646 ("South Bend Action I");

G. On or about February 27, 1992, a consent decree was entered in South Bend Action I pursuant to which the Site Group agreed to reimburse EPA for certain of its past costs and to fund and perform certain work at the Site ("Consent Decree"), as more particularly described in that Consent Decree;

H. Subsequent to the entry of the Consent Decree, EPA asserted that the Consent Decree requires the Site Group to fund and perform work in an area of the Site known as SS-101, which assertion has been denied by the Site Group;

I. On May 17, 1993, AM filed a petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court"), Case No. 93-582 ("Bankruptcy Case 2");

J. On October 15, 1993, the United States, on behalf of EPA, filed a claim in Bankruptcy Case 2 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* ("CERCLA"), for unreimbursed environmental response costs incurred by the United States at the Site, and for response costs to be incurred in the future by the United States at the Site (the "EPA Delaware Claim");

K. On or about October 13, 1993, the Site Group filed claims in Bankruptcy Case 2 pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for recovery of environmental response costs incurred and to be incurred by them under the Consent Decree with regard to the Site (the "Site Group Delaware Claims");

L. The Site Group has demanded that AM pay its volumetric share of the costs of the matters covered in the Consent Decree;

M. AM asserted certain defenses to the Site Group's demand, including, but not limited to, the defense that AM's alleged liability at the Site, if any, was discharged upon confirmation of the Chicago Plan in Bankruptcy Case 1;

N. On November 17, 1994, the Chicago Bankruptcy Court approved a Settlement Agreement between the Site Group and AM (the "Site Group Agreement"), which provides, *inter alia*, for the Site Group to have an allowed Class 4 Claim in Bankruptcy Case 1 in the amount of \$170,000 (the "Site Group Chicago Claim");

O. On October 7, 1992, the United States filed a complaint against thirteen defendants who are not members of the Site Group (the "Defendants"), including Akzo Coatings, Inc. ("Akzo") and O'Brien Corporation ("O'Brien"), in the United States District Court for the Northern District of Indiana, South Bend Division, in the matter known as *United States v. Fisher*, Case No. S92-0063M ("South Bend Action 2.");

P. The United States seeks to recover from the Defendants in South Bend Action 2 that portion of EPA's past costs associated with the Site which were not reimbursed by the Site Group, plus any future costs to be incurred there by EPA;

Q. WHEREAS, DOI has identified certain potential damages reflecting possible injury to, destruction of, or loss of Natural Resources under its trusteeship with regard to the Fisher Calo Site;

R. Akzo and O'Brien allege that they have incurred environmental response costs in connection with the implementation of a removal action at the Site pursuant to an Administrative Order issued by EPA pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606;

S. On or about August 16, 1993, Akzo and O'Brien filed claims in Bankruptcy Case 2 pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for recovery of environmental response costs incurred and to be incurred by them at the Site ("Akzo and O'Brien Delaware Claims");

T. On September 29, 1993, AM's Plan of Reorganization (the "Delaware Plan") was confirmed by the Delaware Bankruptcy Court in Bankruptcy Case 2;

U. For purposes of settlement only, the Parties seek to have the EPA claim and the Akzo and O'Brien claims, which arise from disposals made at the Site prior to confirmation of the Chicago Plan, treated as claims in Bankruptcy Case 1;

V. The Regional Administrator of the EPA, Region V, (hereafter "Regional Administrator") has determined that the de minimis settlement provided for in this Settlement Agreement pursuant to § 122(g)(1), 42 U.S.C. § 9622(g)(1), is practicable and is in the public interest;

W. The Regional Administrator has determined that the settlement embodied in this Settlement Agreement involves only a minor portion of the response costs at the Site pursuant to Section 122 (g)(1), 42 U.S.C. § 9622(g)(1);

X. The Regional Administrator has determined that based upon information currently known to the United States the amount of hazardous substances contributed to the Site by AM is minimal and that the hazardous substances contributed to the Site by AM are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A);

Y. AM's payments to the United States, to the Site Group and to Akzo and O'Brien reflect the appropriate share of AM's liability under CERCLA for all past or future response costs incurred by the United States or any responsible party, for all natural resource damages recoverable under CERCLA, and for any declaratory relief at or in connection with the Site. In evaluating the settlement embodied in this Settlement Agreement and AM's Settlement Agreement with the Site Group, the United States has considered, among other things, the

potential costs of remediating contamination at or in connection with the Site including possible cost overruns; and

Z. The Parties hereto, without admission of liability by any Party, desire to settle, compromise and resolve EPA's claims and the Non-Settlers' claims against AM as set forth below, with respect to the release and threatened release of hazardous substances at the Site in accordance with the provisions hereof.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and agreements set forth below, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Upon its execution, this Settlement Agreement will be lodged by the United States with the Chicago Bankruptcy Court and submitted for public comment by means of the publication of notice of the Settlement Agreement in the *Federal Register*. The United States agrees to provide AM with copies of public comments received, if any. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which in the opinion of the United States indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

2. Upon execution of this Settlement Agreement, AM will file an application with the Chicago Bankruptcy Court seeking to allow a Class 4 Claim by the United States on behalf of EPA in the amount of \$43,384, by the United States on behalf of the U.S. Department of the Interior ("DOI") in the amount of \$1,800, and by Akzo and O'Brien in the amount of \$4,331.00, regarding the matters addressed herein.

3. AM will exercise its best efforts, and take any other action deemed necessary to effect the settlement, to obtain an order approving this Settlement Agreement by the Chicago Bankruptcy Court under Bankruptcy Rule 9019.

4. Effectiveness of Settlement Agreement. This Settlement Agreement shall not be effective unless and until the later of: (a) the United States' motion for entry following public comment as provided in Paragraph 1, above, is approved by the Chicago Bankruptcy Court; and (b) the Settlement Agreement is approved by the Chicago Bankruptcy Court under Bankruptcy Rule 9019 and the subsequent expiration of all applicable appeal periods without the filing of an appeal or petition for rehearing or reargument, which date shall be the Effective Date.

5. On the Effective Date of this Settlement Agreement:

a) EPA shall have, in Bankruptcy Case 1, an allowed Class 4 Claim in the amount of \$43,384 (the "EPA Chicago Claim");

b) The U.S. Department of the Interior shall have, in Bankruptcy Case 1, an allowed Class 4 Claim in the amount of \$1,800.00 (the "DOI Chicago Claim"); and

c) Akzo Coatings, Inc. and O'Brien Corporation shall jointly have, in Bankruptcy Case 1, an allowed Class 4 Claim in the amount of \$4,331.00 (the "Akzo and O'Brien Chicago Claim").

6. If the Chicago Bankruptcy Court does not approve this Settlement Agreement, this Settlement Agreement and all documents, amendments to schedules and proofs of claims, and pleadings filed with the Chicago Bankruptcy Court in furtherance of this Settlement Agreement shall be null and void and of no further force and effect.

7. Settlement Payments by AM.

a) Following the Effective Date, AM shall make the following settlement payment: The allowed EPA Chicago Claim and the allowed DOI Chicago Claim shall be paid in full. The allowed Akzo and O'Brien Claim shall be paid in full. The payments for the EPA Chicago Claim, DOI Chicago Claim and the Akzo and O'Brien Chicago Claim: (1) shall be made within thirty days after the Effective Date; and (2) shall be made exclusively from the unclaimed funds held by the disbursing agent in Bankruptcy Case 1, but from no other source.

b) The payment for the EPA Chicago Claim shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the EPA Region and Spill ID Number, the U.S.A.O. File Number, and DOJ Case Number, as follows, "EPA Spill ID No 05-13;USAO No 93V0174; DOJ No 90-7-1-23D", in accordance with instructions provided by the United States to AM after lodging of this Settlement Agreement. Any EFTs received at the U.S.D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

c) The payment for the DOI Chicago Claim shall be made by check made payable to "Secretary of the Interior", referencing "NRDAR Account No. 14x5198", and referencing that the payment is for natural resource damages with respect to the Fisher Calo Superfund Site, and shall be mailed to:

Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Arlington, Virginia 22203

d) The payment for the Akzo and O'Brien Chicago Claim shall be made by check made payable to "Harker Law Firm trust account" and shall be mailed to:

Mr. Gary R. Letcher
The Harker Firm
5301 Wisconsin Ave. NW, Suite 740
Washington, DC 20015

8. Within thirty (30) calendar days after receipt of all payments in accordance with Paragraph 7, including any stipulated penalties and interest, the United States and Akzo and O'Brien shall provide notice to the Delaware Bankruptcy Court in Bankruptcy Case 2 of such payments, at which time the United States' claims and Akzo's and O'Brien's claims shall be deemed dismissed with prejudice. Each party shall bear its own costs and attorneys' fees in this matter.

9. AM certifies that, to the best of its knowledge and belief, it has conducted a thorough, comprehensive, good faith search for documents and has fully and accurately disclosed to EPA all information currently in its possession, or in the possession of its officers, employees, contractors or agents, which relates in any way to the ownership, operation, generation, treatment, transportation, storage or disposal of a hazardous substance at or in connection with the Site. AM further certifies that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6927.

10. Following the Effective Date, and upon fulfillment of all obligations set forth in Paragraph 7 above, the United States covenants not to bring a civil action or take administrative action relating to the Site against AM and its successors on any and all claims available to the United States but only to the extent that the alleged liability of the successor is based solely on its status and in its capacity as a successor of AM and not to the extent that it arose independently of the alleged liability of AM, for injunctive relief, recovery of response costs, and natural resources damages pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), or Section 7003 of RCRA, 42 U.S.C. § 6973.

11. Akzo and O'Brien covenant that they will not sue AM for any claims, including federal, state, and local statutory or common law claims, demands, or other costs arising out of or relating to any conditions, work, or costs incurred and to be incurred, in connection with the Site.

12. The covenant not to sue set forth in Paragraph 10, above, does not pertain to any matters other than those expressly set forth in this Settlement Agreement. The United States hereby reserves, and this Settlement Agreement is without prejudice to, all rights against AM with respect to all other matters, including, but not limited to:

- a) claims based on a failure by AM to meet a requirement of this Settlement Agreement,
- b) alleged claims, if any, relating to any facility or site other than the Fisher Calo Site;

c) liability for disposal by AM of any hazardous substances at the Site after September 29, 1993, the date of Confirmation of the Plan of Reorganization in Bankruptcy Case 2; and

d) criminal liability, if any.

13. With regard to claims for contribution against AM for matters addressed in this Settlement Agreement, AM is entitled to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

14. "Matters Addressed" as that term is used in Section 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), shall mean all response costs incurred and to be incurred directly or indirectly by EPA, by the Department of Justice on behalf of EPA, or by any PRP at or in connection with the Site, including, but not limited to, all oversight, removal and remedial costs, and all natural resource damages recoverable under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), at or in connection with the Site.

15. Except with respect to any claims brought by the United States, including the EPA, arising out of or relating to the disposal by AM of any hazardous substances at the Site after September 29, 1993, the date of Confirmation of the Plan of Reorganization in Bankruptcy Case 2, AM covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the Site, including but not limited to:

a) any direct or indirect claim for reimbursement from (i) the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 2§ 9507), (ii) under Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 or 9613, or (iii) any other provision of law;

b) any claims arising under the Equal Access to Justice Act, 28 U.S.C. § 2412;

c) any claims pursuant to CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, related to the payments required under Paragraph 7 above, response actions at the Site, oversight costs, or natural resource damages; and

d) any claims arising out of response activities at the Site.

16. 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).

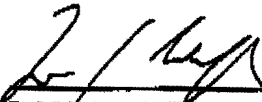
17. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement.

18. This Settlement Agreement represents the complete agreement of the Parties hereto on the matters referred to herein 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 materially amended, modified or supplemented, in whole or part, without the prior written consent of the Parties hereto and the approval of both the Chicago and Delaware Bankruptcy Courts.

19. Execution of this Agreement by AM does not constitute an admission of any liability, fault or wrongdoing, or evidence of such or an admission of violation of any law, rule or regulation on the part of AM.

20. Each signatory to this Agreement on behalf of AM, on behalf of Akzo and O'Brien, and the Assistant Attorney General and the Regional Administrator for the United States represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

FOR THE UNITED STATES OF AMERICA:

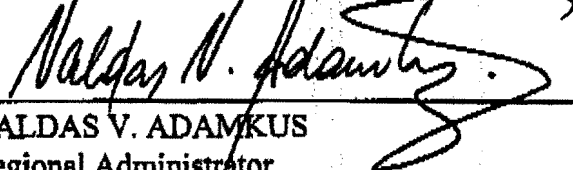


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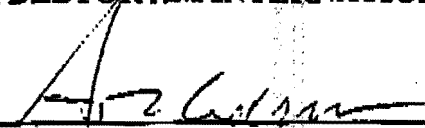


VALDAS V. ADAMKUS
Regional Administrator
U.S. EPA, Region V



ANDREW WARREN
Assistant Regional Counsel
U.S. EPA, Region V

FOR DEBTOR AM INTERNATIONAL, INC.:



Signature of Officer

Steven R. Andrews

Name of Officer

Vice President

Title
9399 W. Higgins Rd., Suite 900
Rosemont, Illinois 60018

Address

HCMR

DOJ

AM INTERNATIONAL

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April 96

FOR CLAIMANT AKZO COATINGS, INC.:

Douglas W. Butler
Signature of Officer

Douglas W. Butler

Name of Officer

Senior Environmental Affairs Manager
Title

4730 Crittenden Drive, Louisville, KY 40209
Address

FOR CLAIMANT O'BRIEN CORPORATION:

[Handwritten Signature]

Signature of Officer

JEROME J. CROWLEY JR

Name of Officer

PRESIDENT

Title

Address

The O'Brien Corporation
1101 San Antonio Rd., Suite 303
Mountain View, CA. 94043

CERTIFICATE OF SERVICE

I certify that I have this 13th day of May, 1996, caused copies of the foregoing "Notice of Lodging of Settlement Agreement" and attached "Settlement Agreement" to be delivered by first class mail, postage prepaid, to the following counsel of record and interested parties in this case:

Susan Franzetti, Esq.
Gardner Carton & Douglas
Quaker Tower - Suite 321
321 North Clark Street
Chicago, Illinois 60610-4795


Mark A. Gallagher