

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 ) CASE NO. 11-09462-JLG-7A  
HARBHUPINDER BAINS, )  
 ) Chapter 7  
Debtor. )

**MOTION TO COMPROMISE AND SETTLE  
ESTATE’S OBJECTION TO REQUEST FOR PAYMENT  
OF ADMINISTRATIVE EXPENSES FILED BY THE UNITED STATES OF  
AMERICA ON BEHALF OF THE UNITED STATES COAST GUARD  
AND NOTICE OF OBJECTION DEADLINE**

Michael J. Hebenstreit (“Trustee”), as Trustee of the bankruptcy estate of Harbhupinder Bains (“Debtor”), by counsel, respectfully moves the Court pursuant to Federal Rule of Bankruptcy Procedure 9019, for authority to settle and compromise the estate’s objection to the *Request for Payment of Administrative Expenses* filed by the United States of America on behalf of the United States Coast Guard (“USCG”) on March 18, 2015 as Docket No. 190 (the “Request for Payment”), and in support of this motion states:

**BACKGROUND**

1. On July 26, 2011, the Debtor filed an individual voluntary Chapter 7 petition under Title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Bankruptcy Court”).
2. The Trustee is the duly appointed Chapter 7 Trustee of Debtor’s bankruptcy estate.

3. Prior to filing his bankruptcy petition, the Debtor owned a 51% interest<sup>1</sup> in a company known as Ashutosh Corporation, which was formed in 2005 by the Debtor and his partner, Ashok Bhargava (“Bhargava”) for the purpose of operating a service station and convenience store in Cloverdale, Indiana, known as the Cloverdale Travel Plaza. When the Debtor and Bhargava purchased the Cloverdale Travel Plaza, the relevant real estate (the “Cloverdale Real Estate”) was titled in the names of Ashutosh Corporation, Bhargava and the Debtor as tenants in common. However, this fact was not mentioned in the Debtor’s bankruptcy Schedules, and the Trustee was unaware the Debtor’s name was on the deed to the Cloverdale Real Estate until such fact was learned in the course of discovery in Adversary Proceeding No. 12-50171, an action brought by the Trustee against the Debtor’s wife to avoid the transfer of his stock interest in Ashutosh Corporation.

4. After the bankruptcy filing, there were a series of oil discharges at the Cloverdale Travel Plaza beginning in late 2011 which required intervention by the United States Environmental Protection Agency (“EPA”) and the USCG. Following these discharges, on March 18, 2015, the United States filed its Request for Payment on behalf of the USCG seeking to recover costs incurred by the EPA under the Oil Pollution Act (“OPA”), 33 U.S.C. § 2701, *et seq.*, in responding to the discharge and threat of discharge of oil at the Cloverdale Travel Plaza. The Request for Payment states that in December of 2011, the EPA discovered a diesel fuel discharge at the Cloverdale Travel Plaza, and the EPA responded by installing an “interceptor trench.”

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<sup>1</sup> The transfer of that interest to the Debtor’s wife, Rajwinder Kaur, was subsequently avoided in Adversary Proceeding No. 12-50171, and a money judgment was entered against Kaur which is presently the subject of an appeal by Kaur to the Seventh Circuit Court of Appeals.

Request for Payment, p. 2, ¶ 4. It further alleges the “Owners” failed to maintain the trench, and that in April 2013, “heavy rain caused oil to discharge from the trench.” *Id.* The Request for Payment asserts that the Owners hired a contractor who remained on the site for only one day, that the EPA reopened a removal action, which continued until May 30, 2013, and ultimately incurred removal costs of \$600,227.66.

5. The Request for Payment asserts that because the Debtor was one of the record owners of the Cloverdale Real Estate, the Debtor is a “responsible party” under 33 U.S.C. § 2701(32)(B), and the resulting costs of remediation are accordingly chargeable to the Debtor’s bankruptcy estate as an expense of administration.

6. The Trustee filed an objection (“Objection”) to the Request for Payment on April 8, 2015, asserting that the estate held only bare legal title to an undivided one-third interest in the Cloverdale Real Estate, that the estate did not control or operate the Cloverdale Travel Plaza and received no benefit therefrom, and that the costs of remediation do not qualify as administrative expenses under the Bankruptcy Code. An objection to the Request for Payment was also filed on April 8, 2015 on behalf of creditor Sukhminder Pooni (the “Pooni Objection”).

7. A hearing on the Request for Payment, the Trustee’s Objection and the Pooni Objection is scheduled for September 30, 2015.

8. After extensive negotiation and review of the applicable law, the Trustee and the USCG have reached a proposed resolution of the issues raised by the Request for Payment and the Trustee’s Objection thereto, pursuant to the terms set forth in the Stipulation and Agreed Order attached hereto as Exhibit “A” (the “Stipulation and Agreed Order”).

**RELIEF REQUESTED**

9. By this Motion, the Trustee seeks an Order Approving the Stipulation and Agreed Order, after notice to parties in interest and opportunity to object.

**BASIS FOR GRANTING RELIEF**

10. Under the proposed settlement, the Trustee would agree to withdraw his Objection and (a) consent to allowance of half of the USCG’s asserted expenses (\$300,000) as an administrative claim in the case, subordinate to the Trustee’s statutory fees, any estate income taxes and any fees incurred by accountants to prepare tax returns, and the allowed fees and expenses of Trustee’s counsel (Rubin & Levin, P.C. and Stamper Rubens, P.S.); and (b) consent to allowance of the balance of the USCG’s asserted expenses (\$300,227.66) as a general unsecured claim. The Stipulation is contingent on approval by this Court and the outcome of the period of public comment, as set forth in Paragraph 18 of the Stipulation.

11. Federal Rule of Bankruptcy Procedure 9019(a) provides that the Court may approve a compromise or settlement after motion by the Trustee, notice to creditors and a hearing. Section 102 of the Bankruptcy Code provides that notice and a hearing means after appropriate notice and opportunity for a hearing, but authorizes action without a hearing if no timely request is made.

12. Approval of a proposed settlement rests solely in the discretion of the bankruptcy court. *Matter of Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992). While the Court must “determine whether the proposed settlement is fair and equitable and in the best interests of the estate[,]” the Court is not required to conduct a full evidentiary hearing regarding the propriety

of settlement. *Depoister v. Holloway Foundation*, 36 F.3d 582, 586-87 (7th Cir. 1994). Stated differently, in reaching a decision on whether to approve a settlement, the Court must make an informed and independent judgment but need not make an independent investigation of the facts and it may give weight to the trustee's informed judgment and consider the competency and experience of counsel supporting the compromise. *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582 (7th Cir. Ill. 1994); *In re Int. Distr. Ctrs., Inc.*, 103 B.R. 420, 422-23 (S.D.N.Y. 1989).

13. The factors relevant to the Court's inquiry include (a) the probability of success in the litigation; (b) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (c) the paramount interest of creditors. *In re American Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987).

14. Here, the Trustee believes that the proposed settlement is a reasonable exercise of sound business judgment and in the best interest of Debtor's estate for the following reasons:

(i) The evidence indicates the USCG undoubtedly incurred substantial time and expenses responding to oil discharge and threats of discharge at the Cloverdale Travel Plaza;

(ii) The extent to which such expenditures are entitled to treatment as administrative expenses in the bankruptcy case is uncertain and would ultimately require resolution of legal issues involving the complicated interplay of federal environmental statutes and the Bankruptcy Code, as well as questions of fact;

(iii) Although the Trustee continues to pursue collection of the judgments in Adversary Proceeding Nos. 12-50171 and 13-50074, claims in the estate presently far exceed the funds on hand; and

(iv) The Trustee believes resolution of the factual and legal issues would be time-consuming and would require the estate to incur significant additional administrative expense in litigating the issues, and that the proposed settlement is a reasonable and expeditious solution that is in the best interests of the estate.

NOTICE IS GIVEN that any objection to the relief requested herein must be filed with the Bankruptcy Clerk within **21 days** from the date of service [or such other time period as may be permitted pursuant to Fed.R. Bankr.P. 9006(f)]. Those not required or not permitted to file electronically must deliver any objection by U.S. mail, courier, overnight/express mail, or in person at: 116 U.S. Courthouse, 46 E. Ohio Street, Indianapolis, IN 46204

Any objecting party must ensure delivery of the objection to the Trustee. **If an objection is NOT timely filed, the requested relief may be granted without hearing.**

WHEREFORE, the Trustee respectfully petitions the Court for an order: (1) approving this compromise and settlement on the terms and conditions set forth in the Stipulation and Agreed Order, (2) authorizing the Trustee to execute any necessary documents and releases as required to complete the settlement; and (3) for all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.  
Attorneys for Trustee

By: /s/ John M. Rogers

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

United States Trustee	<a href="mailto:ustpregion10.in.ecf@usdoj.gov">ustpregion10.in.ecf@usdoj.gov</a>
Bruce Douglas Aukerman	<a href="mailto:Bruce@aukermanlawfirm.com">Bruce@aukermanlawfirm.com</a>
Bruce D. Brattain	<a href="mailto:bbrattain@brattainminnix.com">bbrattain@brattainminnix.com</a>
John S. Capper, IV	<a href="mailto:jcapper@capperlaw.com">jcapper@capperlaw.com</a>
James E. Carlberg	<a href="mailto:jcarlberg@boselaw.com">jcarlberg@boselaw.com</a>
Tina M. Caylor	<a href="mailto:bankruptcy@doylelegal.com">bankruptcy@doylelegal.com</a>
Robert Wharton Darnell	<a href="mailto:robert.darnell@usdoj.gov">robert.darnell@usdoj.gov</a>
David E. Dearing	<a href="mailto:david@dearinglawfirm.com">david@dearinglawfirm.com</a>
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Joseph L. Mulvey	<a href="mailto:jmulvey@rubin-levin.net">jmulvey@rubin-levin.net</a>
Weston E. Overturf	<a href="mailto:woverturf@boselaw.com">woverturf@boselaw.com</a>
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Donald G. Thompson	<a href="mailto:dthompson@hhplawoffice.com">dthompson@hhplawoffice.com</a>
Mark S. Zuckerberg	<a href="mailto:filings@mszlaw.com">filings@mszlaw.com</a>

I further certify that on September 25, 2015, a copy of the foregoing was mailed by first-class U.S. Mail, postage prepaid, or electronic mail as indicated and properly addressed to the following:

FIA Card Services, N.A.  
P.O. Box 15102  
Wilmington, DE 19886-5102

Bonnie Pooni  
c/o Auckerman Law Firm  
350 Poplar Street, P.O. Box 118  
Newport, IN 47966

Sukhminder Pooni  
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First National Bank  
c/o Weston E. Overturf  
Bose McKinney & Evans LLP  
111 Monument Circle, Ste. 2700  
Indianapolis, IN 46204

Ashok K. Bhargava  
c/o David S. Peebles  
Harris Harvey Pebbles & Thompson  
100 W. Main Street  
Crawfordsville, IN 47933

/s/ John M. Rogers  
John M. Rogers



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 ) CASE NO. 11-09462-JLG-7A  
HARBHUPINDER BAINS, )  
 ) Chapter 7  
Debtor. )  
 )  
 )  
 )

**STIPULATION AND AGREED ORDER**

This Stipulation and Agreed Order (“Agreed Order”) is entered into between and among: Michael J. Hebenstreit, in his capacity as the duly-appointed Chapter 7 Trustee (the “Trustee”) of the bankruptcy estate of Harbhupinder Bains (the “Debtor”); and the United States, on behalf of the United States Coast Guard (“USCG”).

**BACKGROUND**

1. On July 26, 2011, the Debtor filed an individual voluntary Chapter 7 petition under Title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Bankruptcy Court”).
2. The Trustee is the duly appointed Chapter 7 Trustee of Debtor’s bankruptcy estate.
3. On March 18, 2015, the United States filed an administrative expense request (“Request”) on behalf of the USCG relating to removal costs incurred by the United States Environmental Protection Agency (“U.S. EPA”) under the Oil Pollution Act (“OPA”), 33 U.S.C. § 2701, *et seq.*, in responding to the discharge and threat of discharge of oil at property of the estate in Cloverdale, Indiana (the “Facility”). When, as in this instance, U.S. EPA serves as the lead federal response agency for an oil spill removal action, U.S. EPA requests and receives funding from the Oil Spill Liability Trust Fund (“Spill Fund”), administered by the National Pollution Funds

Center of the USCG. The Spill Fund is financed in part by reimbursement of federal removal costs from responsible parties. This Request seeks reimbursement of post-petition removal costs in the amount of approximately \$600,650.28 in connection with the Facility ("USCG Claim Amount").

4. On April 8, 2015, the Trustee filed an objection to the United States' Request ("Objection").

5. A hearing on the Objection is scheduled for September 30, 2015.

6. The parties to this Agreed Order believe that it is in their respective best interests and the best interests of the Debtor's bankruptcy estate to resolve the Objection described above to provide for the orderly administration of the Debtor's bankruptcy estate, and to clarify and document their agreements with one another in connection therewith.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in this Agreed Order, the parties hereby stipulate and agree as follows.

7. Bankruptcy Court Approval. This Agreed Order and all of its terms shall be subject to the approval of the Bankruptcy Court. In the event that Bankruptcy Court approval is not forthcoming, this Agreed Order, and all terms of this Agreed Order, shall be deemed null and void and without force or effect.

8. Withdrawal of Objection. Upon Bankruptcy Court approval of this Agreed Order, the Objection shall be deemed withdrawn.

9. Allowed Administrative Claim/Allowed General Unsecured Claim. Three-hundred thousand dollars (\$300,000.00) of the USCG Claim Amount shall constitute an allowed administrative expense claim in the Debtor's bankruptcy case that shall be satisfied from the

proceeds that first become available, except that the \$300,000.00 allowed administrative expense claim shall be subordinate to any allowed administrative expense claim of the Trustee for his statutory fees, any state or federal income taxes payable by the estate, and to allowed administrative expense claims for fees and expenses of counsel for the Trustee, including contingent fees of Rubin & Levin, P.C. and the hourly fees and expenses of Washington counsel Stamper Rubens, P.S. engaged to recover funds for the estate, and fees of any accountant retained to file tax returns of the estate. The remainder of the USCG Claim Amount shall constitute an allowed general unsecured claim in the Debtor's bankruptcy case. Nothing herein shall waive or prejudice any right of the United States to oppose any request for administrative expenses on the ground that it does not constitute an actual, reasonable and necessary expense in administering the bankruptcy estate.

10. Only the amount of cash received by the USCG (and net cash received upon sale of any non-cash distributions) pursuant to this Agreed Order for the USCG Claim Amount, and not the total USCG Claim Amount, shall be credited by the USCG to its account for the site (Facility), which credit shall reduce the liability of non-settling potentially responsible parties for the site (Facility) by the amount of the credit.

11. Cash distributions to the United States pursuant to this Agreed Order shall be made by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice account in accordance with current EFT procedures. 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 Southern District of Indiana and shall reference Bankruptcy Case Number 11-09462 and DOJ File Number 90-11-3-11192. The Trustee shall transmit written confirmation of such cash distributions to the United States at the addresses specified below:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-11192

LaCresha Johnson  
Staff Attorney  
U.S. Coast Guard  
National Pollution Funds Center  
4200 Wilson Blvd., Suite 1019  
Arlington, VA 20598

12. In consideration of the payments that will be made under the terms of this Agreed Order, and except as specifically provided in Paragraphs 13 through 15, the USCG covenants not to file a civil action or to take any administrative or other civil action against the Trustee or the Debtor's Estate pursuant to Section 1002(a) of OPA, 33 U.S.C. § 2702(a), with respect to the Facility for removal costs, including but not limited to direct and indirect costs, that the USCG has paid at or in connection with the Facility, plus accrued interest on all such costs.

13. The covenant not to sue set forth in Paragraph 12 extends only to the Trustee and the Debtor's Estate, and does not extend to any other person. Nothing in this Agreed Order is intended as a covenant not to sue or a release from liability for any person or entity other than the Trustee, the Debtor's Estate, and the United States. The United States, the Trustee, and the Debtor's Estate expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the Debtor for any matter arising at or relating in any manner to the Facility.

14. The covenant not to sue set forth in Paragraph 12 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Agreed Order is without prejudice to, any rights against the Debtor's Estate and the Trustee with respect to all matters other than those set forth in Paragraph 12. The United States also specifically reserves, and this Agreed Order is without prejudice to, any action based on (i) a failure to meet a requirement of this Agreed Order; and (ii) criminal liability. In addition, the United States reserves, and this Agreed Order is without prejudice to, any rights against the Debtor's Estate and the Trustee with respect to the Facility for liability under federal or state law for acts by the Trustee, the Debtor's Estate, and their successors, or assigns that occur after the date of lodging of this Agreed Order.

15. Nothing in this Agreed Order shall be deemed to limit the authority of the United States to take action under Section 311(c) and (e) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(c) and (e), or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority. Nothing in this Agreed Order shall be deemed to limit the information-gathering authority of the United States under Sections 308 and 311(m) of the CWA, 33 U.S.C. §§ 1318 and 1321(m), or any other applicable law or regulation, or to excuse the Debtor's Estate or the Trustee from any disclosure or notification requirements imposed by the CWA or any other applicable law or regulation.

16. Other than any claims or causes of action that could be asserted as defenses, affirmative defenses, counterclaims or rights of set-off in connection with any future action that might be brought by the United States under Paragraph 14 above, the Trustee on behalf of the Debtor's Estate hereby covenants not to sue and agrees not to assert or pursue any claims or

causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Facility pursuant to the OPA, the CWA, or any other federal law, state law, or regulation including, but not limited to, any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund under any provision of law.

17. The parties hereto agree, and by entering this Agreed Order the Bankruptcy Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 1017(f)(3)(B) of OPA, 33 U.S.C. § 2717(f)(3)(B).

18. This Agreed Order shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Agreed Order in the Federal Register. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Agreed Order disclose facts or considerations which indicate that the Agreed Order is not in the public interest.

19. Retention of Jurisdiction. Following Bankruptcy Court approval of this Agreed Order, the Bankruptcy Court shall retain jurisdiction to enforce the terms of this Agreed Order and to resolve any disputes arising among or between the parties to this Agreed Order in connection with its interpretation or implementation.

20. Further Assurances. Without increasing their respective obligations under this Agreed Order, the parties will perform such acts and execute such documents, if any, as may be necessary or appropriate to implement this Agreed Order according to its terms, including, taking all actions necessary and appropriate to obtain Bankruptcy Court approval of this Agreed Order.

21. Binding Agreement. This Agreed Order shall be binding upon, and inure to the benefit of, the Trustee, the Debtor's Estate, the USCG, and their respective successors and assigns, including, but not limited to, any successor trustee hereinafter appointed or elected in the

Debtor's bankruptcy cases and, in the event of any conversion of any of the Debtor's bankruptcy cases to a case under Chapter 11, any debtor-in-possession, as well as any examiner appointed and vested with any enlarged powers that ordinarily would be powers of a bankruptcy trustee.

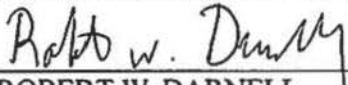
22. Counterparts. This Agreed Order may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreed Order to create one document.

23. Entire Understanding of the Parties. This Agreed Order contains the complete understanding and agreement of the parties with respect to the matters addressed herein, and supersedes all prior representations, warranties, agreements, arrangements, understandings and negotiations. No provision of this Agreed Order may be changed, discharged, supplemented, terminated or waived except in a writing signed by all of the parties.

FOR THE UNITED STATES:



THOMAS A. MARIANI, JR.  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division



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FOR THE TRUSTEE AND DEBTOR'S ESTATE:

A handwritten signature in blue ink, appearing to read "J. Rogers", is written over a horizontal line.

JOHN M. ROGERS, One of Counsel for  
Michael J. Hebenstreit, Trustee of the bankruptcy  
Estate of Harbhupinder Bains  
Rubin & Levin, P.C.,  
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Indianapolis, IN 46204

**EXHIBIT "A"**