

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

In re:)	
)	Chapter 11
)	
INTERSTATE BAKERIES)	
CORPORATION, et al.,)	No. 04-45814 (Jointly Administered)
)	
Debtors.)	
)	
)	
)	

SETTLEMENT AGREEMENT

WHEREAS, on or about September 22, 2004, the Debtors herein filed petitions for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101, *et seq.*, as amended (the "Bankruptcy Code"); and

WHEREAS, on or about March 18, 2005, the United States, on behalf of the Environmental Protection Agency (the "EPA"), filed Proof of Claim 7721 ("Proof of Claim") against Interstate Brands Corporation (the "Debtor");

WHEREAS, the Proof of Claim asserts a claim, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, for at least \$11.1 million for unreimbursed environmental response costs incurred by the United States at the Hows Corner Superfund Site located in Plymouth, Maine (the "Site"), and for response costs incurred in the future by the United States at the Site (collectively, the "EPA Claim");

WHEREAS, the Proof of Claim was asserted as a general unsecured claim; and

WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise and resolve the EPA Claim;

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. The EPA Claim shall be allowed as a general unsecured nonpriority claim against Debtors in the total amount of \$84,020 ("Allowed Claim"), and the United States will be deemed to have withdrawn the EPA Claim. The Allowed Claim will be paid as a general unsecured nonpriority claim without discrimination in accordance with the terms of any plan of reorganization that is confirmed and becomes effective in this Bankruptcy case (hereafter, "Plan of Reorganization"). Distributions received by EPA will either be: (a) deposited in site-specific special accounts within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the particular site for which a claim has been allowed, or be transferred by EPA to the EPA Hazardous Substance Superfund; or (b) be deposited into the EPA Hazardous Substance Superfund.

2. Payment on the EPA Claim shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number _____ and U.S.A.O. file no. _____, in accordance with instructions provided by the United States to the Debtors after execution 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.

3. Only the amount of cash received by EPA (or net cash received by EPA on account of any non-cash distributions) from Debtors under this Settlement Agreement for EPA's Allowed Claim, and not the total amount of the Allowed Claim, shall be credited by EPA to its

account for the Site. Only the amount of the credit shall reduce the liability of non-settling potentially responsible parties to EPA for the Site.

4. In consideration of the foregoing, including, but not limited to, the payments or distributions, if any, that will be made by the Debtors under this Settlement Agreement and any Plan of Reorganization, and the Allowed General Unsecured Claim authorized under this Settlement Agreement, and except as provided in paragraph 5, the United States covenants not to bring a civil action or take administrative action against any of the Debtors pursuant to Sections 106 and 107 of CERCLA and Section 7003 of RCRA relating to the Site, the EPA Administrative Order on Consent Regarding Remedial Investigation and Feasibility Study for Hows Corner Superfund Site, Docket No. CERCLA 1-2000-0004 (June 27, 2000), and the EPA Administrative Order on Consent regarding Remedial Design for Hows Corner Superfund Site, Docket No. CERCLA-01-2004-0058 (May 6, 2004). This covenant not to sue is conditioned upon the complete and satisfactory performance by the Debtors of their obligations under this Settlement Agreement. This covenant not to sue extends only to each of the Debtors and does not extend to any other person.

5. 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 Debtors with respect to all other matters, and specifically with respect to: claims based on a failure by the Debtors to meet a requirement of this Settlement Agreement; and claims for any site other than the Site.

6. The parties hereto agree, and by granting approval of this Settlement Agreement, this Court finds, that this Settlement constitutes a judicially-approved settlement for purposes of

Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Debtors are entitled to protection from actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement are: (a) all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, other than claims, if any, by the State of Maine, and (b) damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such damages, as provided in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. §9607(a)(4)(C).

7. The Debtors covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the 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).

8. 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.

9. Debtors' entry into this Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. Debtors agree to exercise their best efforts to obtain the approval of the Bankruptcy Court. This Settlement Agreement will also be lodged and submitted for public comment following notice of the Settlement Agreement in the Federal Register. 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 indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

10. 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.

11. 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 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. Facsimiles, photocopies, and electronic copies of signatures shall be effective as if they were original signatures.

FOR THE UNITED STATES OF AMERICA:

1-27-09
Date

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

1-27-09
Date

MARK GALLAGHER
Environmental Enforcement Section
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1/15/09
Date

ROBERT W. VARNEY
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Boston, MA 02114-2023


1/13/09
Date

SARAH MEEKS
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street, Suite 1100
Boston, MA 02114-2023

FOR DEBTORS:

10-21-08
Date

INTERSTATE BRANDS CORPORATION

By: _____ 
Name: J. RANDALL VANCE
Title: Senior Vice President, Treasurer & Chief Financial Officer