

RARITAN BAY SLAG SUPERFUND SITE SETTLEMENT AGREEMENT

This is a settlement agreement (“Settlement Agreement”) between Ricardo Lara, Insurance Commissioner of the State of California, in his capacity as Liquidator (the “Insurance Commissioner” or the “Liquidator”) of Western Employers Insurance Company (“WEIC”), the United States Department of the Interior (“DOI”), Environmental Protection Agency (“EPA”), and National Oceanic and Atmospheric Agency (“NOAA”) (collectively referred to as “the Federal Claimants”), acting by and through the United States Department of Justice (“DOJ”) and the Township of Old Bridge, Middlesex County, New Jersey (“Old Bridge”) (each a “Party,” and collectively the “Parties”), as to the claims resolved by this Settlement Agreement. The Parties have agreed to reach a compromise to avoid the expense and time of litigation and to facilitate the timely closing of the WEIC estate, without admission of liability and without admission of the ultimate validity or invalidity of any of the Parties’ positions or arguments.

WHEREAS, as part of this compromise, the Liquidator agrees to approve a proof of claim against WEIC at policyholder priority pursuant to California Insurance Code Section 1033 in favor of the Federal Claimants in the amount of \$ 2,200,000 (two million, two hundred thousand dollars) (the “Settlement Amount”) to resolve the Federal Claimants’ claims against WEIC regarding the Raritan Bay Slag Superfund Site (“Site”) in the Townships of Old Bridge and Sayreville New Jersey, in the manner and through the mechanism following and conditioned upon court approval provided herein, in full compromise of all claims of the Federal Claimants against WEIC for the Site, as provided in Paragraphs 9-12, and 14-15 of this Settlement Agreement.

WHEREAS, WEIC was placed into liquidation on April 19, 1991 by the Superior Court of the State of California, County of Orange. The case was subsequently transferred to the Superior Court of the State of California, County of San Francisco (the “WEIC Liquidation Court”).

WHEREAS, the claim of Old Bridge was rejected by the Liquidator on February 11, 2016, pursuant to California Insurance Code Section 1032.

WHEREAS, the Federal Claimants assert claims pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, against Old Bridge.

NOW, THEREFORE, in consideration of all respective transactions contemplated by this Settlement Agreement, and the mutual covenants and representations herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Proof of Claim.** The EPA filed a proof of claim asserting a right to recover pursuant to Section 1026 of the California Insurance Code based on Old Bridge’s liability under CERCLA Section 107 concerning liability at the Site. That proof of claim shall be deemed amended to include claims by NOAA and DOI regarding natural resource damages at the Site under CERCLA 107, which shall, upon court approval of this Agreement, be deemed a filed amended part of proof of claim number 640057. (“Proof of Claim”).

2. **Policies.** The known policies pursuant to which the Proof of Claim is resolved are all WEIC policies which provide or may provide coverage in whole or in part to Old Bridge whom the Federal Claimants have or may have a claim against pursuant to Section 107 of CERCLA, including, without limitation, Policy Number L-10-1094-11164 (“Policies”) which is the only policy the parties have identified.

3. **Dispute.** The Liquidator and the California Conservation and Liquidation Office dispute the claims for coverage, note that the insured’s proof of claim has previously been rejected, note the prior Federal Priority Statute Release Agreement dated May 11, 2015 with the United States, and further contests the right of the Federal Claimants to assert and file the Proof of Claim at this time. The Federal Claimants dispute the contention that the rejection of the insured’s proof of claim affect the Federal Claims or that the Proof of Claim was filed late. The United States asserts that the claims for coverage are meritorious.

4. **Resolution.** Consistent with the covenant not to sue, this Settlement Agreement is intended as a resolution, as provided in this Settlement Agreement, of all liabilities and obligations of WEIC to the Federal Claimants and Old Bridge enumerated herein, including without limitation the Proof of Claim, and of all other rights of the Federal Claimants arising under CERCLA under the Policies issued by WEIC to Old Bridge, whether listed in this Settlement Agreement or otherwise, past, present or future, known or unknown, vested or contingent. The Federal Claimants warrant that they hold the right to settle all liabilities and obligations of WEIC to the Federal Claimants referenced herein.

5. **Claim Allowance/Settlement Amount.** The Federal Claimants shall receive a claims approval at policyholder priority pursuant to California Insurance Code Section 1033 in the total principal amount of \$2,200,000. The Federal Claimants allocate the \$2,200,000 proof of claim approval as follows:

EPA: \$ 1.76 million. The total amount paid to EPA shall be deposited by EPA in the Raritan Bay Slag Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

NOAA/DOI: \$ 440,000

Interest distributions, if any, shall follow principal among the Federal Claimants, and on behalf of Old Bridge.

6. **Precedent.** The claims approval in and/or the Settlement Amount to the Federal Claimants shall not be cited by any of the Parties in the future as a precedent, or as a basis for the treatment or priority of any claims in any subsequent insurance company receivership or rehabilitation proceeding. The Liquidator of WEIC does not concede by this Settlement Agreement that the Proof of Claim was timely filed or are otherwise valid or meritorious. Likewise, by agreeing to the compromise in this Settlement Agreement the Federal Claimants do not concede the validity or merit of any challenge to the Proof of Claim by the Liquidator.

7. **Payment Directions.** The Conservation and Liquidation Office will request payment instructions from USDOJ via email to Joe.Davis@usdoj.gov and Brandon.Robers@usdoj.gov.

Defendant shall make payment by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Northern District of California. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Raymond J. Minehan, Chief Financial Officer, Conservation and Liquidation Office,
Email: MinehanR@caclo.org; Mailing Address: P.O. Box 26894, San Francisco, CA
94126-6894; Street Address: 100 Pine Street, Suite 1200, San Francisco, CA 94111;
Phone: (415) 676-5000.

At the time of payment, the Liquidator shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268, and Region II to Damaras.Urdaz@epa.gov; (ii) to the United States via email to Brandon Robers, Brandon.robbers@usdoj.gov; and (iii) to NOAA via email to Kimberly Katzenbarger at Office of General Counsel, kimberly.katzenbarger@noaa.gov and Donna Roberts, DARRF Manager, donna.roberts@noaa.gov. Such notice shall state that the payment is pursuant to the Settlement Agreement in *In re Western Employers Insurance Company Proof of Claim: Raritan Bay Slag Superfund Site* and shall reference the DOJ case number 90-11-3-10954/2.

8. **Allocation/Credit.** The Federal Claimants and Liquidator consent to the allocation of the Settlement Amount to the Site, as a payment made on behalf of Old Bridge. Old Bridge shall receive a settlement credit for all distributions made by WEIC to the Federal Claimants, including any distributions of interest, if any. Nothing in this Agreement shall be evidence of, an admission of, or cited as a basis to contend that Old Bridge is liable to the Federal Claimants. However, in the event of any litigation, settlement or other proceedings between Federal Claimants and Old Bridge regarding liability for response costs and natural resource damages at the Site, Old Bridge shall receive settlement credit for any and all payments in distribution made by the Liquidator on behalf of WEIC. The Federal Claimants shall notify Old Bridge when payment has been received from WEIC and to confirm that the credit to Old Bridge has been applied to the benefit of Old Bridge.

9. **Court Approval.** The Liquidator shall seek the approval of the WEIC Liquidation Court for this Agreement. In the event of a distribution, the Federal Claimants agree to provide to the Conservation and Liquidation Office upon request the information necessary to permit payment of distributions regarding the Settlement Amount to the Federal Claimants.

10. **Old Bridge and the Federal Claimants' Covenant Not to Sue.**

a. In consideration of the execution of the Settlement Agreement, and effective upon approval of this Settlement Agreement by the WEIC Liquidation Court, the United States, on behalf of the Federal Claimants, and Old Bridge covenants not to file a civil action against the Insurance Commissioner, the California Department of Insurance, the California Conservation and Liquidation Office and WEIC with respect to all liabilities and obligations to Old Bridge or the Federal Claimants arising under CERCLA under the Policies issued by

the WEIC to Old Bridge, whether such liabilities and obligations are known or unknown, reported or unreported, and whether currently existing or arising in the future. As used in this paragraph and Paragraph 11, the terms Insurance Commissioner, the California Department of Insurance, the California Conservation and Liquidation Office and WEIC shall include their respective subsidiaries, affiliates, parent companies, successors and assigns, and their respective officers, directors, and employees each in their capacity as such.

b. With respect to the Policies, the Federal Claimants and Old Bridge waive the benefits of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

c. The United States specifically reserves, and this Settlement Agreement, including the provisions of Paragraph 10.a, is without prejudice to (a) any action seeking to impose criminal liability, (b) any action based on the failure to meet a requirement of this Settlement Agreement, (c) any claim of the Federal Claimants based on the liability of Old Bridge under any statute other than CERCLA, (d) any claim of any federal agency or department, other than NOAA, DOI, and EPA with respect to the Policies and (e) other than allocation/credit as outlined in Paragraph 8, nothing in this agreement shall affect any claim, including under CERCLA, the Federal Claimants have against Old Bridge.

d. The covenant set forth in Paragraph 10.a extends only to the persons set forth in Paragraph 10.a and does not extend to any other person. The United States expressly reserves all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which it may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the Site or claims addressed herein. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement. This Settlement Agreement resolves a portion of the alleged liability of Old Bridge under CERCLA, including such liability that may exist within the meaning of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for response costs including natural resource damages at the Site to the extent of the Federal Claimants' cash recovery under this Settlement Agreement with respect to the Site.

11. The Liquidator's Covenant Not to Sue. In consideration of the execution of this Settlement Agreement and the approval by the WEIC Liquidation Court, the Insurance Commissioner, the California Department of Insurance, the California Conservation and Liquidation Office and WEIC covenant not to sue the Township or the United States or any department or agency thereof, with respect to any liabilities and obligations to the Federal Claimants under any of Old Bridge's policies, whether such liabilities and obligations are known or unknown, reported or unreported, and whether currently existing or arising in the future, including, but not limited to, (a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507, (b) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, (c) any claims arising out of

response activities at the Site, and (d) any claim to recover all or any part of the Settlement Amount set forth in Paragraph 5 of this Settlement Agreement. This covenant does not limit the Liquidator's right to sue for violations of this Agreement nor to assert any cause of action the Liquidator may have against any person or entity other than those claims expressly released in this Agreement.

12. **Costs.** Upon approval of this Settlement Agreement by the WEIC Liquidation Court, the Federal Claimants' Proof of Claim shall be fully resolved and terminated, with prejudice, with each Party bearing its own costs and fees in connection with the Proof of Claim and the negotiation and performance of this Settlement Agreement.

13. **Remedies.** In the event of a breach of the Settlement Agreement, the Parties shall have all rights and remedies available at common law or by applicable statute. The Parties reserve all rights and arguments concerning the appropriate forum to hear disputes arising from or related to the Settlement Agreement.

14. **Court Approval.** The Liquidator shall recommend this Settlement Agreement for approval to the WEIC Liquidation Court. The Liquidator advises the Federal Claimants and Old Bridge that this Settlement Agreement will be submitted to the WEIC Liquidation Court, and the Parties agree that approval of the WEIC Liquidation Court is a condition precedent to the effectiveness of this Settlement Agreement, including the covenants set forth in Paragraphs 10-11. If the WEIC Liquidation Court approves this Agreement, then the United States shall have an approved Class Two proof of claim in the amounts and in the allocation as set forth in Paragraph 5.

15. **Public Comment.** This Settlement Agreement shall be subject to a period of public comment following publication of notice of this Settlement Agreement in the Federal Register. The Federal Claimants reserve the right to withdraw or withhold their consent if the comments regarding this Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest. After the conclusion of the public comment period, the Federal Claimants will promptly notify the Liquidator in writing whether they consent to the Settlement Agreement and continue to seek its approval by the WEIC Liquidation Court.

16. **Withdrawal.** If for any reason (a) this Settlement Agreement is withdrawn or consent is withheld by the Federal Claimants as provided in Paragraph 15, or (b) the WEIC Liquidation Court voids or fails to enter a final order approving this Settlement Agreement, then: (i) this Settlement Agreement shall be null and void, and the Parties hereto shall not be bound under this Settlement Agreement or under any documents executed in connection herewith; (ii) 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; and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

17. **General.**

- a. The Liquidator and the Federal Claimants further acknowledge that this Settlement

Agreement is made solely for the consideration specified herein, without reliance on any statement, warranties, or representations by the Liquidator, WEIC, its agents or representatives, or by the Federal Claimants or their agents or representatives, or by Old Bridge, other than any representations or warranties contained herein. This is not an agreement of the State of California to pay any sums, but instead creates only obligations on the part of WEIC.

b. All Parties understand and agree that this Settlement Agreement is a compromise in settlement of disputed liabilities and obligations, made to avoid the expense and time of litigation and to facilitate the timely closing of the WEICs estate, without admission of liability and without admission of the ultimate validity or invalidity of any of the Parties' positions or arguments.

c. This Settlement Agreement shall constitute the entire agreement between the Parties and may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever, except by written amendment duly executed by an authorized representative of each of the Parties.

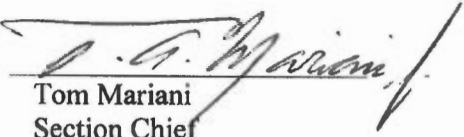
d. This Settlement Agreement may be executed and delivered in multiple counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument and agreement.

e. Each undersigned representative of the Parties certifies that he or she is fully authorized, upon appropriate court approval where applicable, to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Party he or she represents to this document.

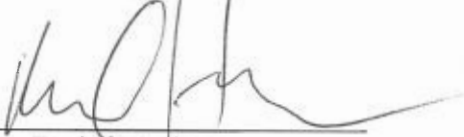
IN WITNESS WHEREOF, The Liquidator, acting on behalf of the WEIC Trusts, the Federal Claimants, and Old Bridge execute the Settlement Agreement by their duly authorized officers or representatives.

Claimant: THE UNITED STATES DEPARTMENT OF THE INTERIOR, ENVIRONMENTAL PROTECTION AGENCY, AND NATIONAL OCEANIC AND ATMOSPHERIC AGENCY

UNITED STATES OF AMERICA, Department of Justice on Behalf of Department of The Interior, Environmental Protection Agency, and National Oceanic and Atmospheric Agency

By: 
Tom Mariani
Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 07-05-2019

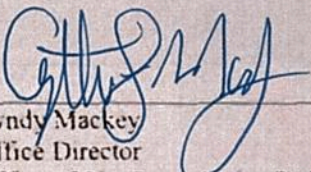
By: 
Rachel Hankey
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-5292
(415)744-6471
Rachel.hankey@usdoj.gov

Date: 07-08-2019

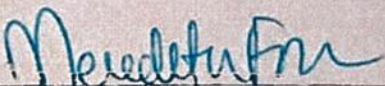
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Claimant: THE UNITED STATES DEPARTMENT OF THE INTERIOR, ENVIRONMENTAL PROTECTION AGENCY, AND NATIONAL OCEANIC AND ATMOSPHERIC AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: 
Cyndy Mackey
Office Director
Office of Site Remediation Enforcement
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Date: 6-20-19

By: 
Meredith Fishburn
Attorney-Advisor
Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Date: 6-20-19

IN WITNESS WHEREOF, The Liquidator, acting on behalf of WEIC Trusts and the Federal Claimants, and Old Bridge execute the Settlement Agreement by their duly authorized officers or representatives.

THE INSURANCE COMMISSIONER AS LIQUIDATOR OF Western Employers Insurance Company

By: David E Wilson

Date: 6/7/2019

David E. Wilson

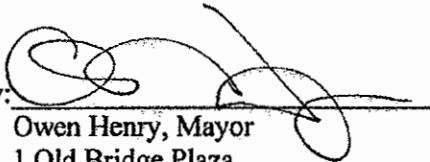
Special Deputy Insurance Commissioner, and not individually, signing on behalf of the Insurance Commissioner of the State of California as Liquidator of Western Employers Insurance Company, and not as an obligation of the State of California

Conservation and Liquidation Office
100 Pine Street, Suite 2600
San Francisco, CA 94111

Mailing Address: Conservation and Liquidation Office
P.O. Box 26894
San Francisco, CA 94126-6894

IN WITNESS WHEREOF, The Liquidator, acting on behalf of WEIC Trusts and the Federal Claimants, and Old Bridge execute the Settlement Agreement by their duly authorized officers or representatives.

THE TOWNSHIP OF OLD BRIDGE, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY,

By: 
Owen Henry, Mayor
1 Old Bridge Plaza
Old Bridge, New Jersey
08857

Date: June 14, 2019