

IN THE MATTER OF:

Helmet Products Fire Superfund Site  
Griffin, Spalding County, Georgia

Premier Autoreflexion, Inc.,  
Alan R. Mobley,  
Carol M. Morrow,  
and  
C. Richard Morrow,  
SETTLING PARTIES

SETTLEMENT AGREEMENT FOR  
RECOVERY OF PAST RESPONSE  
COSTS

U.S. EPA Region IV  
CERCLA Docket No. 04-2009-3763

PROCEEDING UNDER SECTION  
122(h)(1) OF CERCLA 42 U.S.C. § 9622(h)(1)

**I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated by EPA Region 4 Regional Delegation No. 14-14-D from the Regional Administrator of EPA Region 4 ultimately to the Chief of the CERCLA Program Services Branch (renamed as Superfund Enforcement and Information Management Branch).

2. This Settlement Agreement is made and entered into by EPA and by Premier Autoreflexion, Inc., (f/k/a "Helmet Products, Inc." a/k/a "Helmut Products, Inc." hereinafter "Helmet Products"), Alan Mobley, Carol Morrow, and Richard Morrow ("Settling Parties"). Each Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

**II. BACKGROUND**

3. This Settlement Agreement concerns the Helmet Products Fire Superfund Site (the "Site") located in Griffin, Spalding County, Georgia. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.



10452975

5. In performing its response action, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

8. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

### **III. PARTIES BOUND**

9. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their heirs and successors and assigns as the case may be. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "*CERCLA*" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "*Day*" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "*Effective Date*" shall mean the effective date of this Settlement Agreement as provided by Section XV.

d. "*EPA*" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "*Interest*" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "*Owner Settling Parties*" shall mean Alan R. Mobley, Carol M. Morrow, and C. Richard Morrow.

g. "*Paragraph*" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

h. "*Parties*" shall mean EPA and Settling Parties.

i. "*Past Response Costs*" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the Effective Date plus accrued Interest on all such costs through such date.

j. "*Section*" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

k. "*Settlement Agreement*" shall mean this Settlement Agreement for Recovery of Past Response Costs .

l. "*Settling Parties*" shall mean Owner Settling Parties and Premier Autoreflexion, Inc. (f/k/a Helmet Products, Inc., a/k/a Helmut Products, Inc.), collectively.

m. "*Site*" shall mean the Helmet Products Fire Superfund Site having EPA Region IV CERCLIS # GAN000109849, and located at 1523 Kell Lane, Griffin, Spalding County, Georgia.

n. "*United States*" shall mean the United States of America, including its departments, agencies and instrumentalities.

## V. PAYMENT OF RESPONSE COSTS

11. Within 30 days of the Effective Date of this Settlement Agreement, Settling Parties shall pay to EPA the sum of **One Hundred Seven Thousand Five Hundred Sixty Five and 79/100 Dollars (\$107,565.79 USD)**, plus any additional sum accounting for Interest on that amount calculated from thirty (30) days after the Effective Date through the date of payment.

12. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Parties by EPA Region IV, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name (i.e., "Helmet Products Fire Superfund Site"), the EPA Region (i.e., "EPA Region IV") and the Site/Spill ID Number, (i.e., "Site/Spill ID A4LF"), and the CERCLA Docket Number of this Settlement Agreement as set out hereinabove for the action.

13. At the time of payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XII (*Notices and Submissions*). Such notice shall reference the EPA Region and Site/Spill ID Number Site/Spill ID A4LF and the EPA CERCLA Docket Number of this Settlement Agreement as set out hereinabove.

14. The total amount to be paid pursuant to Paragraph 11 shall be deposited in the EPA Hazardous Substance Superfund.

## VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

15. Interest on Late Payments. If any Settling Party fails to make any payment required by Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

16. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 11 are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, Five Hundred Dollars (\$500.00 USD) per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The

check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number, and the EPA CERCLA Docket Number for this Settlement Agreement. Settling Parties shall send the check (and any accompanying letter) as follows:

If payment is sent by regular, U.S. Postal Service:

U.S. Environmental Protection Agency  
Region 4 Superfund Receivable  
P.O Box 371099M  
Pittsburgh, PA 15251

If payment is sent by express delivery:

Mellon Client Service Center  
Region 4 Superfund Receivable  
Attn: Shift Supervisor Lockbox 371099M  
500 Ross Street  
Pittsburg, PA 15262-0001

If a phone number for express delivery is required, please use: (412) 234-5805.

c. At the time of each payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XII (*Notices and Submissions*). Such notice shall identify the EPA Region and the Site Spill ID Number and the EPA Docket Number for this Settlement Agreement.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the failure of any one or more of Settling Parties to make the payments required under this Settlement Agreement, the remaining Settling Parties shall be responsible for such payments.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

#### **VII. COVENANT NOT TO SUE BY EPA**

20. Covenant Not to Sue by EPA. Except as specifically provided in Section VIII (*Reservations of Rights by EPA*), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (*Payment of Response Costs*) and any amounts due under Section VI (*Failure to Comply with Settlement Agreement*). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

#### **VIII. RESERVATIONS OF RIGHTS BY EPA**

21. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 20. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Setting Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

22. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

### **IX. COVENANT NOT TO SUE BY SETTLING PARTIES**

23. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Georgia, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

24. Nothing in this Settlement Agreement shall be deemed to constitute approval or 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).

25. **Non-Exempt De Micromis Waiver** Subject to Paragraph 26, Settling Parties agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

26. The waiver in Paragraph 25 ("*Non-Exempt De Micromis Waiver*") shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION**

27. Except as provided in Paragraph 25 (*Non-Exempt De Micromis Waiver*), 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. Except as provided in Paragraph 25 (*Non-Exempt De Micromis Waiver*), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II (*Background*) of this Settlement Agreement.

29. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters



addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Parties have, as of the Effective Date, resolved their liability to the United States for Past Response Costs.

30. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

31. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII (*Covenant Not to Sue by EPA*).

## **XI. RETENTION OF RECORDS**

32. Until five (5) years after the effective date of this Settlement Agreement, each Settling Party shall preserve and retain all records, reports, or information (hereinafter referred to as “records”) now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the five (5) year document retention period in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Parties shall deliver any such records to EPA. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the

privileged information only. Settling Parties shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

34. Each Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and 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 RCRA, 42 U.S.C. § 6927.

## **XII. NOTICES AND SUBMISSIONS**

35. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

**As to EPA:**

U.S. Environmental Protection Agency  
Attn: Fernando Rivera  
Region 4 - SEIMB  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

and

U.S. Environmental Protection Agency  
Paula V. Painter  
Environmental Protection Specialist  
Region 4 - SEIMB  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

**As to Settling Parties:**

C. Richard Morrow  
715 W. Solomon Street  
Griffin, Georgia 30233-2740

**XIII. INTEGRATION**

36. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

**XIV. PUBLIC COMMENT**

37. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.


**XV. EFFECTIVE DATE**

38. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 37 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

**IT IS SO AGREED:**

**U.S. Environmental Protection Agency**

By:

  
\_\_\_\_\_  
Anita L. Davis, Chief  
Superfund Enforcement and Information Management Branch  
Superfund Division

3/30/09  
(Date)

The undersigned Settling Party, In the Matter of U.S. EPA Region 4, CERCLA Docket No. 04-2009-3763 enters into this Settlement Agreement Relating to the *Helmet Products Fire Superfund Site*, Griffin, Spalding County, Georgia:

**FOR SETTLING PARTY:**

(Please type or print name, address, etc.)

REGINAL LINDSEY  
1516 Kalamazoo Dr  
Griffin GA 30224  
\_\_\_\_\_  
\_\_\_\_\_

FOR PREMIER AEROSPACE INC.  
G. Lindsey AS ADVISED  
3/17/09

COPY

By: Reginal Lindsey  
(Signature)

3-09-09  
(Date)

REGINAL LINDSEY  
( Please Type or Print Name)

The undersigned Settling Party, In the Matter of U.S. EPA Region 4, CERCLA Docket No. 04-2009-3763, enters into this Settlement Agreement Relating to the *Helmet Products Fire Superfund Site*, Griffin, Spalding County, Georgia:

**FOR SETTLING PARTY:**

*(Please type or print name, address, etc.)*

Alan R. Mobley  
Alan R. Mobley  
715 West Solonah ST  
Griffin, Ga. 30223

COPY

By: Alan R. Mobley  
*(Signature)*

3/9/09  
*(Date)*

Alan R. Mobley  
*( Please Type or Print Name)*

The undersigned Settling Party, In the Matter of U.S. EPA Region 4, CERCLA Docket No. 04-2009-3763, enters into this Settlement Agreement Relating to the *Helmet Products Fire Superfund Site*, Griffin, Spalding County, Georgia:

**FOR SETTling PARTY:**  
(Please type or print name, address, etc.)

Carol M. Morrow  
915 West Solomon Street  
Griffin GA 30232

COPY

By: Carol M Morrow 3-9-09  
(Signature) (Date)

Carol M. Morrow  
( Please Type or Print Name)

The undersigned Settling Party, In the Matter of U.S. EPA Region 4, CERCLA Docket No. 04-2009-3763, enters into this Settlement Agreement Relating to the *Helmet Products Fire Superfund Site*, Griffin, Spalding County, Georgia:

**FOR SETTTLING PARTY:**

(Please type or print name, address, etc.)

C. RICHARD MORROW  
715 W. SOMMER ST.  
GRIFFIN, GA 30223  
CO-OWNER OF PROPERTY

COPY

By:

*C. Richard Morrow*  
(Signature)

3/9/09  
(Date)

C. RICHARD MORROW  
( Please Type or Print Name)