

SETTLEMENT AGREEMENT AMONG
The UNITED STATES DEPARTMENT OF THE INTERIOR,
on behalf of The U.S. FISH AND WILDLIFE SERVICE;
The UNITED STATES DEPARTMENT OF COMMERCE, on behalf of
The NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION;
The DELAWARE DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL;
M.S. ELEGANCE SCHEEPVARTBEDRJF C.V. (ELEGANCE SHIPPING); AND
JR SHIP MANAGEMENT B.V.

I. Introduction

The United States Department of the Interior, on behalf of the U.S. Fish and Wildlife Service (“FWS”); the United States Department of Commerce, on behalf of the National Oceanic and Atmospheric Administration (“NOAA”); and the Delaware Department of Natural Resources and Environmental Control (“DNREC”) (FWS, NOAA and DNREC are collectively referred to as the “Trustees”) and M.S. Elegance Scheepvaartbedrijf C.V. (Elegance Shipping), the registered owner of the *M/V Bermuda Islander* and JR Ship Management B.V., the operator of the *M/V Bermuda Islander* (M.S. Elegance Scheepvaartbedrijf C.V. (Elegance Shipping) and JR Ship Management B.V. are collectively referred to as the “Responsible Parties” or the “RPs”) enter into this Settlement Agreement to resolve, without litigation, the Trustees’ civil claims under the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.* (“OPA 90”), as well as DNREC’s claims under the Delaware Hazardous Substance Cleanup Act, 7 Delaware Code Chapter 91 (“HSCA”) for damages for injuries to natural resources resulting from the oil release from the *M/V Bermuda Islander* into the marine waters and shoreline habitats of Delaware Bay, Delaware which occurred on April 25, 2006 (the “Incident”). FWS, NOAA and DNREC have shared trust responsibilities for the natural resources injured as a result of the Incident and this Settlement Agreement (“Agreement” or “Settlement Agreement”) is executed by all three agencies as Natural Resource Trustees. The Trustees and the Responsible Parties are referred to collectively as the “Parties.” The execution of this Agreement shall not constitute, nor is it in any way, an admission by any of the Parties of any liability.

II. Parties Bound

The provisions of this Settlement Agreement shall be binding upon the Parties and all of their officers, directors, agents, servants, employees, predecessors in interest, successors in interest, assigns, and all persons, firms, subsidiaries, divisions, or corporations acting under or for them relating to the Incident.

III. Definitions

Except as otherwise expressly provided herein, the terms used in this Settlement Agreement which are defined in OPA 90 or in the natural resource damage assessment regulations promulgated pursuant to OPA 90 (15 C.F.R. Part 990) shall have the meaning assigned to them in OPA 90 or in such regulations.

IV. Payment of Certain Costs and Damages

A. Within thirty (30) days after the effective date of this Settlement Agreement, the RPs shall pay to the Trustees a total of two hundred seventy thousand dollars (\$270,000). Of this amount:

(1) \$20,879.93 is to be paid to FWS as reimbursement for past natural resource damage assessment ("NRDA") costs which it incurred relating to the Incident; and

(2) \$31,430.89 is to be paid to NOAA as reimbursement for past NRDA costs which it incurred relating to the Incident; and

(3) \$11,333.77 is to be paid to DNREC as reimbursement for past NRDA costs which it incurred relating to the Incident; and

(4) the balance of \$206,355.41 is to be paid to DNREC for the restoration, rehabilitation, replacement, or acquisition of the equivalent of natural resources injured in the Incident, including the costs of restoration planning and oversight. DNREC shall deposit the funds received pursuant to this Paragraph IV.A.(4) in an account maintained by DNREC which is used solely for the purpose of natural resource restoration.

B. The RPs shall send a check in the amount set forth in Section IV.A.(1) made payable to the “U.S. Department of the Interior” and referencing the “Bermuda Islander Oil Spill – Account No. 14X5198” to:

Marcia F. Gittes, Esq.
Office of the Northeast Regional Solicitor
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton, MA 02458-2881

C. The RPs shall send a check in the amount set forth in Section IV.A.(2) made payable to “NOAA/U.S. Dept. of Commerce” and referencing the “Bermuda Islander Oil Spill” to:

Gwendolyn A. McCarthy, Esq.
U. S. Department of Commerce
NOAA Office of General Counsel
One Blackburn Drive
Gloucester, MA 01930

D. The RPs shall pay the amounts set forth in Sections IV.A. (3) and (4) to DNREC by two separate checks in accordance with instructions to be provided by DNREC.

(1) At the time of payment of the amounts specified in Section IV.A.(3) and (4), the RPs shall send a written notice of payment and a copy of any transmittal documentation to:

Robert S. Kuehl, Esq.
Delaware Department of Justice
Carvel State Building
820 N. French Street
Wilmington, DE 19801

(2) At the time of payment of the amount specified in Section IV.A.(4), the RPs shall send a written notice of payment and a copy of any transmittal documentation to:

Marcia F. Gittes, Esq.
Office of the Northeast Regional Solicitor
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton, MA 02458-2881

and

Gwendolyn A. McCarthy, Esq.
U. S. Department of Commerce
NOAA Office of General Counsel
One Blackburn Drive
Gloucester, MA 01930

E. Should the RPs fail to make any payment when due, they shall pay five hundred dollars (\$500) as stipulated penalties for each day or portion thereof that said payment is overdue until all overdue payments (including stipulated penalties) are paid in full.

F. The RPs shall be liable for attorneys' fees and costs incurred by the Trustees to collect any amount due under this Settlement Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by the Trustees

In consideration of the payments to be made by the RPs, the Trustees covenant not to sue the RPs, their successors, their corporate officers, directors, or employees acting in their capacities as such for: (i) damages for injury to, destruction of, loss of, or loss of use of, natural resources arising from the Incident, including natural resource damage assessment and restoration monitoring costs associated with the Incident and, except as set forth in Section IV above,; (ii) costs, attorneys' fees, other fees, or expenses incurred by the Trustees to recover such natural resource damages in connection with the Incident.

This covenant not to sue shall not be effective until, and is conditioned upon, complete and satisfactory performance by the RPs of their obligations under Section IV of this Settlement Agreement.

VI. Covenant Not to Sue by Responsible Parties

The RPs hereby covenant not to sue and agree not to assert any claims or causes of action against the FWS, NOAA or DNREC or their respective employees, agents, experts or contractors for claims related to the Incident.

VII. Effective Date

The effective date of this Settlement Agreement shall be the date upon which the FWS issues written notice to the RPs that all Parties have executed this Settlement Agreement.

VIII. Signatories

Each of the undersigned representatives of the Parties to this Settlement Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such party to this Agreement.

IX. Entire Agreement

This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties and supersedes all prior inducements, agreements and understandings, whether oral or written. Any subsequent modifications to this Agreement must be in writing and executed by all of the Parties.

X. Execution

This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

M.S. ELEGANCE SCHEEPVARTBEDRJF C.V. (ELEGANCE SHIPPING)

Charles, O'Connor Deffg LLP Date: Nov. 13, 2008
By: James J O'Connor
Title: Attorney in fact

JR SHIP MANAGEMENT B.V.

Charles, O'Connor Deffg LLP Date: Nov. 13, 2008
By: James J O'Connor
Title: Attorney in fact

**THE U.S. DEPARTMENT OF THE INTERIOR
on behalf of the U.S. FISH AND WILDLIFE SERVICE:**

Anthony R Conte

Date: 12/18/08

By: Anthony R. Conte
Title: Northeast Regional Solicitor
U.S. Department of the Interior

**THE U.S. DEPARTMENT OF COMMERCE
on behalf of the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:**

Date: _____

By: _____

Title: _____

The Delaware Department of Natural Resources and Environmental Control

Date: _____

By: John A. Hughes, Secretary
Title: Secretary of Natural Resources
and Environmental Control

**THE U.S. DEPARTMENT OF THE INTERIOR
on behalf of the U.S. FISH AND WILDLIFE SERVICE:**

Date: _____

By: Anthony R. Conte
Title: Northeast Regional Solicitor
U.S. Department of the Interior

**THE U.S. DEPARTMENT OF COMMERCE
on behalf of the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:**

Katherine A. Pease Date: 12/23/08

By: Craig R. O'Connor
Title: Special Counsel for Natural Resources

The Delaware Department of Natural Resources and Environmental Control

Date: _____

By: John A. Hughes, Secretary
Title: Secretary of Natural Resources
and Environmental Control

**THE U.S. DEPARTMENT OF THE INTERIOR
on behalf of the U.S. FISH AND WILDLIFE SERVICE:**

Date: _____

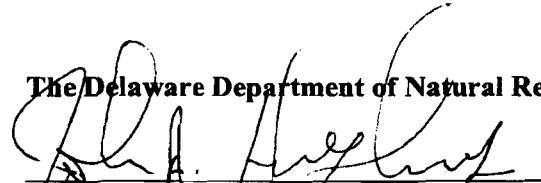
By: Anthony R. Conte
Title: Northeast Regional Solicitor
U.S. Department of the Interior

**THE U.S. DEPARTMENT OF COMMERCE
on behalf of the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:**

Date: _____

By: _____
Title: _____

The Delaware Department of Natural Resources and Environmental Control



Date: _____

By: John A. Hughes, Secretary
Title: Secretary of Natural Resources
and Environmental Control