

**EXHIBIT A**

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EXHIBIT A

FOSTER GARVEY PC  
1111 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206)447-4400 FAX 206-749-9700

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

In re:

TOC Holdings Co.,

Debtor.

Chapter 7

Case No. 17-11872-CMA

**CERCLA BANKRUPTCY SETTLEMENT AGREEMENT**

WHEREAS, TOC Holdings Co., fka Time Oil Co. (“Debtor”) filed with the Bankruptcy Court for the Western District of Washington (the “Bankruptcy Court”) a voluntary petition for relief under Title 11 of the United States Code (the “Bankruptcy Code”) on April 24, 2017 (the “Petition Date”), which has been administered as *In re: TOC Holdings Co.*, Case No. 17-11872 (the “Bankruptcy Case”) by Edmund J. Wood as Chapter 7 trustee (the “Bankruptcy Trustee”) of the bankruptcy estate of the Debtor (the “Bankruptcy Estate”);

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency (“EPA”), the United States Department of the Interior (“DOI”), and the United States Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”) (collectively, United States”) has filed a proof of claim (Claim No. 47-1) (the “United States’ Proof of Claim”), contending that TOC is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, for costs incurred and to be incurred by the

United States in response to releases and threats of releases of hazardous substances, and for damages to natural resources at or in connection with the Portland Harbor Superfund Site, located in Multnomah County, Oregon (the “Portland Harbor Site”);

WHEREAS, the United States’ Proof of Claim asserts the aforementioned response cost and natural resources damages liabilities as a general unsecured claim;

WHEREAS, the Bankruptcy Trustee disagrees with elements of the United States’ allocation of liability for response costs and natural resources damages and, but for this Settlement Agreement, would dispute, in whole or in part, the United States’ Proof of Claim;

WHEREAS, the Bankruptcy Trustee and the United States wish to resolve Debtor’s liability with respect to the Portland Harbor Site as provided herein;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).
2. With respect to the Portland Harbor Site, the United States, on behalf of EPA, shall have an allowed claim of \$19,256,160 (the “EPA Allowed Claim”), to be paid as a general unsecured claim.

3. With respect to the Portland Harbor Site, the United States, on behalf of DOI and NOAA (DOI and NOAA, jointly, the “Federal Natural Resources Trustees”) shall have an allowed claim of \$12,465,559 (the “NRD Allowed Claim”), to be paid as a general unsecured claim.

4. The EPA Allowed Claim and the NRD Allowed Claim shall receive the same treatment as all other allowed unsecured claims, with all attendant rights provided by the Bankruptcy Code and other applicable law, and shall not be entitled to any priority in distribution over other allowed unsecured claims. In no event shall the EPA Allowed Claim or the NRD Allowed Claim be subordinated to any other allowed unsecured claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

5. EPA will deposit any portion of any cash distributions it receives pursuant to this Settlement Agreement into a special account established by EPA for the Portland Harbor Site within the Hazardous Substance Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3). EPA may retain and or use the funds received from this settlement to conduct or finance response actions taken at or in connection with the Portland Harbor Site, or transfer all or any portion of such funds to the Hazardous Substance Superfund.

6. The Federal Natural Resources Trustees will deposit any portion of any cash distributions received pursuant to this Settlement Agreement into a Court registry account established by the Federal Natural Resources Trustees for the Portland Harbor Site or Site-specific numbered account within the DOI NRDAR Fund for the Portland Harbor

Site. The Federal Natural Resources Trustees may retain and or use the funds received from this settlement to conduct or finance actions taken to restore, replace, or acquire the equivalent of natural resources damaged by releases of hazardous substances in connection with the Portland Harbor Site or to reimburse the Federal Natural Resources Trustees for the reasonable costs of assessing such damages to natural resources.

7. Only the amount of cash received by EPA pursuant to this Settlement Agreement for the EPA Allowed Claim, and not the total amount of the EPA Allowed Claim, shall be credited as a recovery by EPA for the Portland Harbor Site, which credit shall reduce the liability of non-settling potentially responsible parties for the Site by the amount of the credit.

8. Only the amount of cash received by Federal Natural Resources Trustees pursuant to this Settlement Agreement for the Federal Natural Resources Trustees' Allowed Claim, and not the total amount of the Federal Natural Resources Trustees' Allowed Claim, shall be credited as a recovery by Federal Natural Resources Trustees' for the Portland Harbor Site, which credit shall reduce the liability of non-settling potentially responsible parties for the Site by the amount of the credit.

9. Cash distributions to the United States pursuant to this Settlement Agreement shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System ("CDCS") number, to be provided to the Bankruptcy Trustee by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Washington.

10. At the time of any cash distribution pursuant to this Settlement Agreement, the Bankruptcy Trustee shall transmit written confirmation of such distribution to the United States at the addresses specified below, and email confirmation of such distribution to the EPA Cincinnati Finance Office at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), with a reference to Bankruptcy Case Number 17-11872-CMA, the CDCS number, and Site/Spill ID Number ORSFN1002155:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-11829

Stephanie Mairs  
Assistant Regional Counsel  
1200 6<sup>th</sup> Avenue, MS-113, Suite 900  
Seattle, Washington 98101  
[Mairs.stephanie@epa.gov](mailto:Mairs.stephanie@epa.gov)

Deirdre Donahue  
Attorney-Advisor  
United States Department of the Interior  
Office of the Solicitor  
601 SW 2<sup>nd</sup> Avenue, Suite 1950  
Portland, OR 97204  
[Deirdre.donahue@sol.doi.gov](mailto:Deirdre.donahue@sol.doi.gov)

Ericka Hailstocke-Johnson  
Attorney-Advisor  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
501 West Ocean Blvd.  
Long Beach, CA 90802  
[Ericka.hailstocke-johnson@noaa.gov](mailto:Ericka.hailstocke-johnson@noaa.gov)

Christopher Plaisted  
Attorney-Advisor  
National Oceanic and Atmospheric Administration

Office of General Counsel, Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
[Christopher.plaisted@noaa.gov](mailto:Christopher.plaisted@noaa.gov)

11. Notwithstanding any other provision of this Settlement Agreement, and except as provided under applicable non-bankruptcy law, there shall be no restrictions on the ability and right of EPA or the Federal Natural Resources Trustees to transfer or sell its right to all or a portion of any distributions of the Bankruptcy Estate to one or more third parties, or to transfer or sell to one or more third parties all or a portion of the EPA's or the Federal Natural Resources Trustees' Allowed Claim.

12. In consideration of the distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 13 - 15, EPA and the Federal Natural Resources Trustees covenant not to file a civil action or take administrative action against the Bankruptcy Estate pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Portland Harbor Site.

13. The covenant set forth in Paragraph 12 extends only to the Debtor and does not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant for any person or entity other than the Debtor and the United States. EPA, the Federal Natural Resources Trustees, and the Bankruptcy Trustee 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 Portland Harbor Site. Further, nothing in this Settlement Agreement

diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement.

14. The covenant set forth in Paragraph 12 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to all matters other than those set forth in Paragraph 12. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of this Settlement Agreement. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to the Portland Harbor Site for liability under federal or state law for acts by the Debtor, its successors, or assigns that occur after the date of lodging of this Settlement Agreement.

15. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, provided, however, that nothing in this sentence affects the covenant set forth in Paragraph 12. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or



regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

16. The Bankruptcy Trustee 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 Portland Harbor Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Portland Harbor Site. Nothing in this Settlement Agreement shall be deemed 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).

17. Notwithstanding any other provision of this Settlement Agreement, the Bankruptcy Trustee reserves, and this Settlement Agreement is without prejudice to, claims against the United States in the event any claim is asserted by the United States against the Debtor pursuant to any of the reservations set forth in Paragraph 14, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that the Debtor's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

18. The parties hereto agree, and by entering this Settlement Agreement the parties request that the Bankruptcy Court finds, that this Settlement Agreement constitutes a judicially-approved settlement pursuant to which Debtor has, as of the

Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken, all response costs incurred or to be incurred, and all natural resources damages at or in connection with the Portland Harbor Site by the United States or any potentially responsible parties, provided, however, that, if EPA or the Federal Natural Resources Trustees exercise rights under the reservations in Paragraph 14, other than for failure to meet a requirement of this Settlement Agreement, the “matters addressed” in this Settlement Agreement shall no longer include those response costs, response actions, or natural resources damages claims that are within the scope of the exercised reservation. “Effective Date” means the date on which this Settlement Agreement is approved by the Bankruptcy Court.

19. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States’ responses to the comments, and at that time, the United States and the Bankruptcy Trustee will request approval of the Settlement Agreement as required by paragraph 20 below. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement

disclose facts or considerations that indicate that the Settlement Agreement is not in the public interest.

20. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. The Bankruptcy Trustee shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code following the required comment period described above.

21. Upon the entry of an order approving this Settlement Agreement by the Bankruptcy Court as required by paragraph 20 above, this Settlement Agreement shall constitute a judicially-approved settlement pursuant to which the Bankruptcy Trustee has, as of the Effective Date, resolved the Debtor's liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B) in connection with the Portland Harbor Site.

22. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 19, or (b) the Settlement Agreement is not approved by the Bankruptcy Court: (i) this Settlement Agreement shall be null and void, and the parties hereto shall not be bound under the 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.

23. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein.

24. This Settlement Agreement may not be amended except by a writing signed by all the parties and approved by the Bankruptcy Court.

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

26. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the Western District of Washington) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

The undersigned party hereby enters into this Settlement Agreement in *In re TOC Holdings Co.*, Case No. 17-11872-CMA (Bankr. W.D. Wash.).

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

By: *Nathaniel Douglas*  
NATHANIEL DOUGLAS  
Deputy Chief, Environmental Enforcement  
Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: April 9, 2021

By: *Frederick S. Phillips*  
FREDERICK S. PHILLIPS  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
(202) 305-0439  
[Frederick.phillips@usdoj.gov](mailto:Frederick.phillips@usdoj.gov)

The undersigned party hereby enters into this Settlement Agreement in *In re TOC Holdings Co.*, Case No. 17-11872-CMA (Bankr. W.D. Wash.).

FOR THE BANKRUPTCY ESTATE:

Date: \_\_\_\_\_

By: *April 12, 2021* *Edmund J Wood*  
EDMUND J. WOOD as Chapter 7 Trustee of  
the Bankruptcy Estate of TOC Holdings Co.,  
fka Time Oil Co.