

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA ON BEHALF OF
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, THE
COMMONWEALTH OF PUERTO RICO ON BEHALF OF THE DEPARTMENT
OF NATURAL AND ENVIRONMENTAL RESOURCES, AND RAMA SHIPPING

I. Introduction

1. The United States of America, on behalf of the National Oceanic and Atmospheric Administration ("NOAA"), the Commonwealth of Puerto Rico, on behalf of the Department of Natural and Environmental Resources ("the Commonwealth"), and Rama Shipping (as hereinafter defined) (collectively referred to as the "Parties") enter into this Settlement Agreement to settle, without litigation, the United States' and the Commonwealth's civil claims alleged under the Oil Pollution Act, 33 U.S.C. §§ 2701 *et seq.* ("OPA") and other federal and Commonwealth law, for damages for injury to natural resources arising from the grounding of the M/V FORTUNA REEFER off the coast of Mona Island, Puerto Rico on July 24, 1997 (the "Incident"). Rama Shipping, as hereinafter defined, does not admit that it has any liability to the United States or the Commonwealth arising out of the Incident. The United States and the Commonwealth are co-trustees of the injured natural resources, and this Settlement Agreement is executed on behalf of the United States and the Commonwealth as co-trustees. The United States has determined that due to the need for emergency restoration of the injured coral resources there is insufficient time to permit the opportunity for public comment prior to the effective date of this Settlement Agreement.

II. Parties Bound

2. The provisions of this Settlement Agreement shall apply to and be binding upon the United States, the Commonwealth, and upon the M/V FORTUNA REEFER in rem, the Rama Shipping Company, Ltd. and its trustees, officers, employees, owners, executors and administrators, agents, successors, assigns, protection and indemnity associations, underwriters, guarantors, operators, managers, charterers, consultants, salvors, and all persons acting on its behalf relating to the Incident (collectively referred to herein as "Rama Shipping").

III. Definitions

3. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in OPA or in the natural resource damage assessment regulations promulgated under OPA shall have the meaning assigned to them in OPA or in such regulations.

IV. Payment of Certain Costs and Damages

4. Within seven (7) business days of the date that this Settlement Agreement is signed by all of the Parties, Rama Shipping shall pay to NOAA and the Commonwealth the sum of one million two hundred and fifty thousand dollars (\$1,250,000.00) which shall be used to implement natural resource restoration projects by the federal and Commonwealth trustees and to reimburse the trustees for past and future damage assessment costs, as more fully set forth in Attachment A to this Settlement Agreement. The form of payment shall be as follows:

a. Rama Shipping shall transfer six hundred and fifty thousand (\$650,000) via an Electronic Funds Transfer (EFT) through the Automated Clearing House (AFT) in a

CCD+ format to NOAA's account at the First National Bank of Chicago (FNBC). (FNBC TRANSIT ROUTING: 071000013 AND AGENCY ACCOUNT 11-13801). The addenda record shall be annotated "RE: M/V FORTUNA REEFER ACCOUNT." A copy of the paperwork documenting the EFT and any accompanying correspondence to the NOAA Finance Services Division shall be sent to:

Cheryl Scannell
NOAA Office of General Counsel, Natural Resources
9721 Executive Center Drive North
Room 137
St. Petersburg, FL 33702
Fax: (813) 570-5376

Joel Gross, Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington D.C. 20044

b. Rama Shipping shall submit for crediting to NOAA a certified or cashier's check payable to the "United States Treasury" in the amount of one hundred thousand dollars (\$100,000) to the United States Attorney for the District of Puerto Rico, Federal Building, Room 452, Chardon Avenue, Hato Rey, Puerto Rico 00918. The check shall be accompanied by a letter referring to the M/V FORTUNA REEFER and to this Paragraph of this Settlement Agreement, and enclosing a copy of this Settlement Agreement. The United States Attorney shall forward payment to NOAA in accordance with instructions received from the United States Department of Justice.

c. Rama Shipping shall deliver by hand to the Commonwealth of Puerto Rico, at the following address: John Nevares, Smith & Nevares, 1225 Ponce de Leon, San Juan,

Puerto Rico 00908-3667, one certified check in the amount of four hundred thousand dollars (\$400,000.00) and one certified check in the amount of one hundred thousand dollars (\$100,000.00). Both checks shall be made payable to the "Puerto Rico Department of Natural and Environmental Resources."

5. In the event that Rama Shipping fails to make the payments referenced in Paragraph 4 hereof on time, interest shall be assessed pursuant to the provisions of 33 U.S.C. § 2705. Any interest amounts accrued pursuant to this Paragraph shall be divided between NOAA and the Commonwealth in the same proportion as the payments to be made pursuant to Paragraph 4 hereof. Rama Shipping shall be liable for attorneys' fees and costs incurred by the United States or the Commonwealth to collect any amount due under this Settlement Agreement.

V. Covenants Not to Sue and Reservations of Rights
by the United States and the Commonwealth

6. In consideration of the payments that have been and will be made by Rama Shipping, the United States and the Commonwealth covenant not to sue Rama Shipping for (i) civil 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; (ii) for any attorneys' fees, costs or expenses incurred by the Commonwealth while the M/V FORTUNA REEFER was under arrest; and (iii) other than as set forth in Paragraph 5 hereof, for costs, attorneys' fees, other fees, or expenses incurred in this action by the United States and the Commonwealth to recover natural resource damages. This covenant not to sue is not effective until, and is conditioned upon, complete and satisfactory performance by Rama Shipping of its obligations under this Settlement

Agreement.

7. Notwithstanding any other provision of this Settlement Agreement, the United States and the Commonwealth reserve, and this Settlement Agreement is without prejudice to, any claims not included in Paragraph 6, including, but not limited to:

a. claims based upon a failure of Rama Shipping to meet a requirement of this Settlement Agreement;

b. criminal liability;

c. claims for any costs or damages, including but not limited to any removal costs, incurred by the United States, or paid by the Oil Spill Liability Trust Fund for claims other than claims on behalf of the public for natural resource damages, in connection with the Incident.

8. Within seven (7) days of complete and satisfactory performance by Rama Shipping of its obligations under this Settlement Agreement, including payment of the amounts required pursuant to Section IV of this Settlement Agreement, and in consideration of the payments that have been and will be made by Rama Shipping, the Commonwealth covenants to dismiss with prejudice its action against the M/V FORTUNA REEFER, filed on July 31, 1997 in the United States District Court for the District of Puerto Rico (the "Commonwealth Action").

VI. Covenant Not to Sue by Rama Shipping

9. Rama Shipping hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the Commonwealth, including any department, agency or instrumentality of the United States or the Commonwealth, and including their employees, agents, experts or contractors, for claims related to the Incident, including but not

limited to:

- a. any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. §§ 2708, 2713 or any other provision of law;
- b. any claims arising out of any removal activities undertaken by either the United States or the Commonwealth, including but not limited to the arrest and maintenance of the M/V FORTUNA REEFER by the Commonwealth;
- c. any claims for costs, attorneys fees, other fees, or expenses incurred in this action, in connection with the Incident, or in connection with the Commonwealth Action.

10. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth relating to the Incident, Rama Shipping 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 by the United States or the Commonwealth in the subsequent proceeding were or should have been settled in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section V hereof.

VII. Signatories

11. Each undersigned representative of Rama Shipping, the Secretary of the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico, and the United States on behalf of NOAA, certifies that he or she is fully authorized to enter

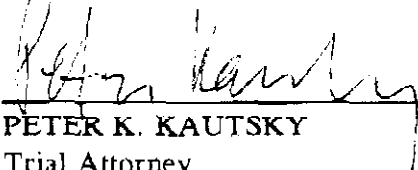
into the terms and conditions of this Settlement Agreement and to execute and legally bind such party to this document.

For the United States of America

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

Date: September 11, 1997


By:


PETER K. KAUTSKY
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

For the Commonwealth of Puerto Rico

Date:

9/14/97


JOHN NEVARES
Smith & Nevares
P.O. Box 13667
San Juan, Puerto Rico 00908-3667

09/11/97 THU 15:55 FAX 2026182427

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On Behalf of Rama Shipping (as defined in
Paragraph 2 hereof)

Date:

9/11/97


EUGENE J. O'CONNOR

Freehill, Hogan & Mahar

80 Pine Street

New York, NY 10005-1759