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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In the matter of)	NO. 83-01372
)	NO. 83-01373
MATERIALS RECLAMATION)	
COMPANY, INC. (MARALCO),)	STIPULATION FOR DISBURSEMENT
)	OF PROCEEDS OF SALE OF
Debtor.)	PROPERTY AND PAYMENT OF
)	ADMINISTRATIVE PRIORITY
)	CLAIM
HALPIN - LYON, a Washington)	
partnership.)	

COME NOW secured creditors Leasco of Washington, Inc. ("Leasco") and Seattle-First National Bank ("Sea-First"), and secured creditor The Union Labor Life Insurance Company (ULLICO), and the State of Washington, Department of Ecology ("Ecology"), and Quentin Steinberg, duly appointed Examiner in the bankruptcy estates of Materials Reclamations Co., Inc. ("MARALCO") and Halpin Lyon Partnership ("Partnership") and stipulate and agree as follows:

- MARALCO and Partnership filed petitions in bankruptcy seeking relief under Chapter 11 on May 4, 1983.
- MARALCO was in the business of buying pure metals, including aluminum and scrap, melting and recycling the alloyed metal for sale to foundries. MARALCO operated on an approximate six-acre site in Kent, King County, Washington,

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2 which real property was owned by the Partnership and leased to
3 MARALCO. The Partnership and MARALCO are owned by Nace Halpin
4 and Jack Lyon. During the period preceding and ensuing the
5 Bankruptcy Petition, MARALCO generated some 50,000 tons of
6 "black dross," a by-product or waste of the smelting operation.

7 3. The State of Washington, Department of Ecology,
8 determined that "black dross" is a state-designated toxic
9 dangerous waste, regulated by ch. 70.105 RCW and ch. 173-303
10 WAC. Certain other waste materials stored at the MARALCO site
11 were characterized by Ecology as extremely hazardous waste.
12 Unless and until the waste is delisted or exempted from
13 designation, the waste may only be disposed of at an approved
14 disposal site. There is no dollar estimate available for costs
15 of disposal or containment of the waste and cleanup of the
16 MARALCO property.

17 4. On December 16, 1986, Ecology ordered MARALCO to
18 immediately begin actions to prevent pollutant material from
19 entering surface waters of the State of Washington, to
20 consolidate, stabilize, and contain all solid waste currently
21 stored at the MARALCO site, including the "black dross" which
22 is classified as a dangerous waste, to segregate and store
23 indoors and undercover all extremely hazardous waste, to
24 identify and characterize all contaminated material, and to
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STIPULATION FOR DISBURSEMENT
OF PROCEEDS OF SALE OF PROPERTY - 2

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submit a plan for complete containment and/or disposal of all waste from the site.

5. MARALCO did not comply with Ecology's orders.

6. In May of 1987, Ecology determined that a first-phase emergency response at the MARALCO site was warranted. Ecology conducted a remedial action, pursuant to RCW 70.105A.060, to prevent the leaching of the "black dross" to surface waters of the State of Washington. Ecology also constructed containment ditches and fences to minimize off-site migration and to stabilize the site until further remedial action could occur.

7. On June 27, 1988, Ecology filed a claim in the bankruptcy case for Priority Administrative Expense and an 11 U.S.C. § 506(C) claim in the amount of \$60,628.27 for the remedial action.

8. The Examiner has previously petitioned the Court to disburse approximately \$180,000 held by the bankruptcy estate. Approximately \$120,000 of this money, plus interest earned thereon, is Accounts Receivable proceeds in which Seattle-First National Bank claims a first security interest. The remaining approximately \$60,000 plus interest earned thereon is the result of recoveries of preferential payments and other avoiding powers, and is subject to administrative expense claims. The Examiner has advised the Court that, other than

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OF PROCEEDS OF SALE OF PROPERTY - 3

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2 these monies, there are no funds available in the Estate for a
3 cleanup of the property.

4 9. The Examiner tried without success, to find a buyer
5 for the MARALCO property. The Examiner did receive one offer
6 in 1986 to purchase the property for approximately \$1.6 million
7 free and clear of all liens, but that offer was later
8 withdrawn.

9 10. The most recent assessed value of MARALCO's real
10 property is \$918,200 for land and \$1,019,500 for improvements
11 for a total of \$1,937,700.

12 11. There are liens against the property in excess of
13 three million dollars in favor of ULLICO, Sea-First, Leasco and
14 various taxing authorities and the State of Washington,
15 Department of Ecology.

16 12. Sea-First holds a perfected security interest
17 constituting a senior and paramount lien in an amount of
18 approximately \$1,357,190 upon the following described land and
19 premises owned by MARALCO and/or the Partnership, located in
20 the City of Kent, King County, Washington:

21 The north half of Lot 25 and all of Lots 26 and 27,
22 O'Brien Station Garden Tracts No. 2, according to
23 the plat thereof recorded in Volume 15 of Plats,
page 66, Records of King County, Washington;

24 Except that portion of said tract 27 lying Westerly
25 of a line parallel with and distant 35 feet
Easterly, measured at right angles, from the
26 Easterly line of the right of way of Northern

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OF PROCEEDS OF SALE OF PROPERTY - 4

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Pacific Railway Company and North of a line parallel with and distant 1,200 feet South, measured at right angles, from the North line of tract 21 of said Plat.

13. Leasco holds a perfected security interest and/or lessor's interest in the approximate amount of \$790,300 in equipment and fixtures leased or owned by MARALCO and used upon the following described land and premises:

The north half of Lot 25 and all of Lots 26 and 27, O'Brien Station Garden Tracts No. 2, according to the plat thereof recorded in Volume 15 of Plats, page 66, Records of King County, Washington;

Except that portion of said tract 27 lying Westerly of a line parallel with and distant 35 feet Easterly, measured at right angles, from the Easterly line of the right of way of Northern Pacific Railway Company and North of a line parallel with and distant 1,200 feet South, measured at right angles, from the North line of tract 21 of said Plat.

14. ULLICO has a perfected real property security interest constituting a first and paramount lien of approximately \$1,339,404 upon the following described land and premises owned by MARALCO and/or the Partnership in the City of Kent, King County, Washington:

That portion of Tract 27 of O'Brien Station Garden Tracts No. 2, as per plat recorded in Volume 15 of Plats, page 66, records of King County, Washington, described as follows:
Commencing at the northwest corner of said Tract 27;
thence south 88°13'13" east along the north line thereof, a distance of 35.33 feet to the true point of beginning;

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thence continuing south 88°13'13" east, a distance of 385.41 feet;
thence south 01°46'47" west, a distance of 190.00 feet;
thence north 88°13'13" west, a distance of 14.08 feet;
thence south 01°46'47" west, a distance of 320.26 feet;
thence north 88°13'13" west, a distance of 301.13 feet to a point on the east line of the west 35 feet of said Tract 27, said point lying 1200 feet south of, as measured at right angles, from the north line of Tract 21 of said O'Brien Station Garden Tracts No. 2;
thence north 06°03'13" west, along said east line, a distance of 515.07 feet to the true point of beginning. TOGETHER WITH those easements described below.

EASEMENTS

Spur Track Easement over the following real property in King County, Washington:

That portion of Tract 27 of O'Brien Station Garden Tracts No. 2, as per plat recorded in Volume 15 of Plats, on page 66, records of King County, Washington, described as follows:

Commencing at the northwest corner of said Tract 27;

thence south 06°03'13" east along the west line thereof, a distance of 515.06 feet to the true point of beginning;
thence continuing south 06°03'14" east along said west line, a distance of 120.61 feet to the southwest corner thereof;
thence south 88°13'39" east along the south line thereof, a distance of 28.00 feet;
thence north 09°21'23" east, a distance of 120.53 feet;
thence north 88°13'13" west, a distance of 25.00 feet;
thence north 88°12'47" west, a distance of 35.33 feet to the true point of beginning.

Spur Track Easement over the following real property in King County, Washington:

STIPULATION FOR DISBURSEMENT OF PROCEEDS OF SALE OF PROPERTY - 6

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That portion of Tract 28 of O'Brien Station Garden Tracts No. 2, as recorded in Volume 15 of Plats, on page 66, records of King County, Washington described as follows:
Beginning at the northwest corner of said Tract 28; thence south 88°13'39" east along the north line thereof a distance of 16.00 feet;
thence south 07°06'04" west, a distance of 69.65 feet to the west line thereof;
thence north 06°03'13" west along said west line, a distance of 70.00 feet to the beginning.

15. Ecology has a perfected junior lien in the amount of approximately \$60,000, filed pursuant to RCW 70.105B.150. This lien is subject to the rights of holders of security interests perfected in accordance with law before notice of the state lien.

16. Although Sea-First, Leasco and ULLICO retain their priority liens on the property, none are owners or operators of the MARALCO facility or property. Because of the potential liability associated with ownership of the MARALCO property under state and federal law, none of these secured creditors is willing to acquire ownership of the property until a cleanup occurs.

17. Ch. 70.105B RCW, enacted by the 50th Legislature in its 1987 Third Special Session, imposed liability on owners and operators of a facility where a release of a hazardous substance occurred. That statute excluded from liability banks and other persons holding security interests in a facility who exercised control consistent with customary lending practices,

STIPULATION FOR DISBURSEMENT
OF PROCEEDS OF SALE OF PROPERTY - 7

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if such control did not include the operation of the facility or assumption of the business decisions of the facility.

18. The Model Toxics Control Act (Initiative 97), enacted by the people of the State of Washington in the general election of November 1988, which superseded ch. 70.105B RCW on March 1, 1989, imposes liability on owners and operators of a facility where a release of hazardous substance has occurred as well as on generators and transporters of such substances. This statute also excludes from liability banks and other persons holding security interests in a facility who, without participating in the management of a facility, hold indicia of ownership primarily to protect the person's security interest in the facility.

19. Sea-First, Leasco and ULLICO hold security interests in the MARALCO facility and property and, indicia of ownership, if any, to protect Sea-First's, Leasco's and ULLICO's respective security interests in the facility. Sea-First, Leasco and ULLICO individually certify that they have not exercised control over the MARALCO site other than as is consistent with ordinary and customary lending practices, and such control, if any, did not include operation of the facility or assumption of business decisions of the facility, and have not participated in the management of MARALCO nor operated MARALCO nor assumed the business decisions of MARALCO.

STIPULATION FOR DISBURSEMENT
OF PROCEEDS OF SALE OF PROPERTY - 8

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Sea-First, Leasco and ULLICO have not caused or contributed to the release or threatened release of hazardous substances from MARALCO, nor used their security interests as a device to avoid liability that would otherwise exist.

20. Sea-First, Leasco and ULLICO are not "potentially liable persons" within the meaning of ch. 70.105B RCW or the Model Toxics Control Act (Initiative 97).

21. Sea-First, Leasco, ULLICO and the Examiner agree that a remedial investigation and site characterization and other remedial action are required to dispose of the property subject to the liens of secured creditors.

22. Sea-First, Leasco, ULLICO and the Examiner agree that by stipulating to share proceeds from any execution or other sale of the MARALCO property with Ecology, Sea-First, Leasco and ULLICO can create a mechanism to help pay for the cleanup of the property.

23. Section 506(c) of the Bankruptcy Code provides that a lienholder may be charged with the reasonable costs and expenses incurred by the debtor or trustee which are required to preserve or dispose of the property subject to the lien to the extent the lienholder derives a benefit therefrom.

24. Sea-First, Leasco, ULLICO and the Examiner agree that by stipulating to this Agreement they are compromising a future potential Section 506(c) claim of Ecology for cost recovery of

STIPULATION FOR DISBURSEMENT
OF PROCEEDS OF SALE OF PROPERTY - 9

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 2 the remedial actions taken by Ecology at the MARALCO site.
 3 These costs may be the reasonable costs and expenses which
 4 would be incurred by the estate to preserve or dispose of the
 5 property, from which the lienholders may derive a benefit.

6 25. Subject to budgetary, priority and/or hazard ranking
 7 constraints, Ecology agrees to:

8 a. Conduct a remedial investigation at the MARALCO
 9 site;

10 b. Ecology shall use its best good faith efforts to
 11 see that a site investigation and characterization occur at the
 12 MARALCO site in Kent, Washington on or before April, 1993;

13 c. The site investigation and characterization at
 14 the MARALCO site shall be conducted pursuant to applicable
 15 standards set forth in the Model Toxics Control Act (Initiative
 16 97) and other applicable law;

17 d. Upon completion of the site investigation and
 18 characterization, Ecology will attempt to rank the MARALCO site
 19 and use its best good faith efforts to have the site scheduled
 20 for cleanup as soon as reasonably practicable.

21 26. Sea-First, Leasco and ULLICO shall have the right to
 22 exercise their creditors' rights against the MARALCO site at
 23 any time during Ecology's remedial investigation and site
 24 characterization, provided, however, that if Sea-First, Leasco
 25 or ULLICO elect to exercise such rights prior to such
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STIPULATION FOR DISBURSEMENT
 OF PROCEEDS OF SALE OF PROPERTY - 10

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 2 completion of site characterization they shall do so in a
 3 manner not to interfere with performance of the remedial
 4 investigation and site characterization by Ecology.

5 All costs expended by Ecology up to such point will be
 6 subject to the Ecology reimbursement provisions of this
 7 Agreement.

8 Ecology will retain its oversight role in any remedial
 9 action conducted by Sea-First, Leasco, ULLICO, the Examiner or
 10 their agents or by a third party.

11 Once the remedial investigation and site characterization
 12 are complete, nothing shall preclude Sea-First, Leasco and/or
 13 ULLICO from exercising their creditors' rights and foreclosing
 14 on the property; however, nothing in this Agreement shall
 15 affect any resulting liability pursuant to state or federal
 16 law.

17 27. In the event that the property, or any part thereof,
 18 is cleaned up or is otherwise free of hazardous waste, whether
 19 such clean-up is conducted by Ecology, the secured creditors,
 20 or a third party, then the property shall be sold and the net
 21 sale proceeds shall be divided as provided in paragraph 28 of
 22 this Stipulation.

23 28. Upon sale of the property, or any part thereof, by
 24 Sea-First, the Bankruptcy Estate, Leasco and/or ULLICO, whether
 25 by bankruptcy court order, sheriff's sale, trustee's sale or
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 2 other means, Sea-First, Leasco, ULLICO, the Examiner and
 3 Ecology agree that the net proceeds of the sale shall be
 4 divided as follows: (a) the lesser of (i) one-half (50%) of
 5 the proceeds or (ii) an amount equal to all Ecology's costs¹
 6 for remedial investigation, site characterization, cleanup and
 7 monitoring, shall be paid to Ecology; and (b) the greater of
 8 (i) one-half (50%) of the proceeds or (ii) the proceeds of such
 9 sale(s) remaining after reimbursement of Ecology shall be paid
 10 to Sea-First, Leasco, and ULLICO as their respective interests
 11 appear of record, or as said parties may mutually direct in
 12 writing. The obligation to reimburse Ecology for remedial
 13 costs shall apply to any and all costs incurred by Ecology with
 14 respect to the remedial investigation, site characterization
 15 and/or cleanup, subject to any lien arising from RCW
 16 70.105B.150 and any long-term monitoring to be conducted by
 17 Ecology at the site.

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 20 ¹Costs shall mean those reasonable administrative expenses
 21 incurred by Ecology in cleaning up the site, which include but
 22 are not limited to preliminary investigation, preparation and
 23 review of engineering and geotechnical reports and plans and
 24 specifications, preparing and obtaining cleanup contracts,
 25 support to direct supervisory and management actions, data
 26 management, overseeing execution of cleanup, contracts and
 attendant actions, monitoring and evaluating performance of
 cleanup including site closure and long term monitoring,
 securing necessary laboratory analyses, and overhead directly
 relating to these activities.

STIPULATION FOR DISBURSEMENT
 OF PROCEEDS OF SALE OF PROPERTY - 12

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29. Ecology agrees to withdraw its 506(c) claim against the approximate \$120,000 accounts receivable money, to which Sea-First claims a first security interest.

30. Sea-First agrees to reduce its claim to the accounts receivable proceeds from approximately \$120,000 to approximately \$100,000 in order to provide the Bankruptcy Estate the sum of \$20,000 to be used during the remedial investigation phase for expenses incurred by the Estate in managing the site, including without limitation costs of fencing and security for the site.

31. Ecology agrees to reduce its priority administrative expense claim from \$60,000 to \$40,000 in order to provide the Bankruptcy Estate the sum of \$20,000 during the remedial investigation phase for expenses incurred by the Estate in managing the site.

32. Sea-First, Leasco, ULLICO and the Examiner withdraw any objections made to Ecology's revised priority administrative expense claim of \$40,000.

33. The parties hereto agree and acknowledge that the intent of this Stipulation is to resolve disputes and potential disputes concerning the cleanup of environmental waste at the MARALCO site, and to set forth a procedure and terms and limitations on the subject real property's contribution to the costs of environmental cleanup.

STIPULATION FOR DISBURSEMENT
OF PROCEEDS OF SALE OF PROPERTY - 13

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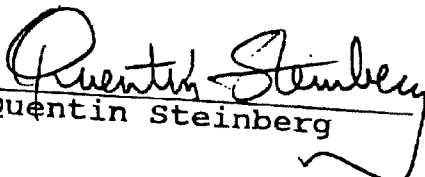
34. This Stipulation is effective upon the entry of a court order approving this Agreement and the terms thereof.

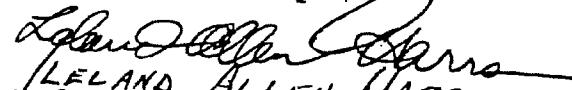
DATED this 19 day of June, 1989.

DODD, CONEY & BISHOP
Attorneys for The Union
Labor Life Insurance Company

STEINBERG & STEINBERG,
Examiner

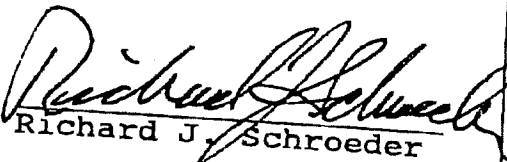
By 
William Bishop


By 
Quentin Steinberg


By 
LELAND ALLEN HARRIS
2ND VICE PRESIDENT
The Union Labor Life
Insurance Company

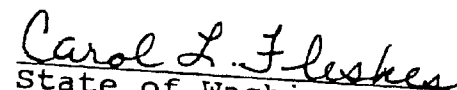
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Attorneys for Seattle-First
National Bank and Leasco
Washington, Inc.

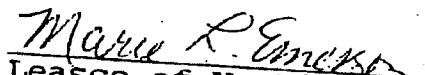
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ASSISTANT SECRETARY

STIPULATION FOR DISBURSEMENT
OF PROCEEDS OF SALE OF PROPERTY - 14

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