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14 *Commissioner of the State of California as*  
*Liquidator of Western Employers Insurance*  
15 *Company*

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SAN FRANCISCO

19 **INSURANCE COMMISSIONER OF THE**  
20 **STATE OF CALIFORNIA,**

21 Applicant,

22 v.

23 **WESTERN EMPLOYERS INSURANCE**  
24 **COMPANY,**

25 Respondent.

Case No. CPF-97-984281

**DECLARATION OF MICHELE VASS IN  
SUPPORT OF APPLICANT INSURANCE  
COMMISSIONER OF THE STATE OF  
CALIFORNIA'S MOTION FOR  
APPROVAL OF EPA PIONEER METAL  
SETTLEMENT AGREEMENT**

Date: February 24, 2021  
Time: 9:30 a.m.  
Dept: 302  
Judge: Honorable Ethan P. Schulman

ELECTRONICALLY

**D**

Superior Court of California,  
County of San Francisco

**01/22/2021**

Clerk of Court

BY SANDR SCHIRO

Deputy Clerk

1 I, Michele Vass, declare as follows:

2 1. I am the Chief Claims Officer with the California Insurance Commissioner's  
3 ("Commissioner") Conservation and Liquidation Office. I am authorized to make this declaration  
4 on behalf of the Commissioner, who has been appointed as the liquidator ("Liquidator") in this  
5 proceeding. I have over 35 years of experience in handling claims, with the last 20 years being in  
6 a liquidation environment. The following statements are based upon my personal knowledge and  
7 in part upon the records of Western Employers Insurance Company in liquidation. If called upon  
8 as a witness, I could and would testify competently to the facts in this declaration.

9 2. Western Employers Insurance Company ("WEIC") is a California insurance company  
10 which has been in liquidation since April 19, 1991. The initial claims bar date for WEIC was  
11 November 15, 1991. The Liquidator received 9,608 proofs of claims by the claims bar date. This  
12 Court set a 2010 update deadline, and a 2017 deadline for claims to be liquidated. This motion  
13 deals with the resolution of the claim of the United States Environmental Protection Agency  
14 ("EPA") relating to Pioneer Metal Finishing, Inc., who is also known as Pioneer Metal Finishing  
15 Co., Inc. and Pioneer Metal Finishing Company, Inc. ("Pioneer Metal") in New Jersey.

16 3. WEIC issued a single excess policy to Pioneer Metal which provided limits of  
17 coverage of \$2 million. Pioneer Metal filed a proof of claim, which the Liquidator rejected.  
18 Pioneer Metal did not challenge the rejection. In 2015, the Liquidator obtained this Court's  
19 approval for a release by the United States of super-priority claims arising from the WEIC  
20 liquidation.

21 4. Subsequently, the EPA filed a proof of claim with the Liquidator asserting  
22 environmental and natural resource claims against Pioneer Metal arising from the Pioneer Metals  
23 Finishing Superfund Site, a Pioneer Metal business site in Franklinville, New Jersey, and  
24 claiming that it should be accorded Class Two treatment under Insurance Code section 1033. The  
25 EPA sought payment of the full policy limits of \$2 million, and claimed that it had expended  
26 several million dollars in remediation at the site and that it projected a clean-up cost of over \$70  
27 million.

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1           5.     The EPA provided materials in support of its claims sufficient to permit a  
2 determination to settle the issues as to the potential coverage by the WEIC policy through a \$1.2  
3 million claims approval.

4           6.     I have examined the claims materials and analyzed the issues concerning this claim.  
5 In the event of proof of claim litigation, the parties would litigate issues such as whether the  
6 subject loss was a known loss, the timing of the EPA's claim and the expiration of the claims bar  
7 date, the release of super-priority claims, third-party claimant's rights and the rejection of Pioneer  
8 Metal's claim, and the application of the loss allocation principles. These issues are complicated,  
9 and it will take resources to litigate the claim. The resolution of the claim will aid in bringing this  
10 liquidation to conclusion. Given the complexity of the issues involved, in my role as the Chief  
11 Claims Officer, I believe that it will be appropriate to settle this proof of claim matter and that a  
12 settlement at \$1.2 million is a reasonable resolution of this matter. The parties decided to  
13 compromise after a comprehensive claims analysis and an extensive dialogue as to the claim.

14           7.     Based on the foregoing, the Liquidator recommends that the Court approve the entry  
15 into the EPA Pioneer Metal Settlement Agreement ("Settlement Agreement"), a true and correct  
16 copy of which is attached hereto as Exhibit "A" and incorporated into this declaration by  
17 reference for all purposes. The effect of the Court's approval is that the EPA's proof of claim  
18 will be approved at policyholder priority to the limited extent of \$1.2 million and otherwise  
19 rejected.

20           I declare under the penalty of perjury under the laws of the State of California that the  
21 foregoing facts are true and correct. Executed on this 19<sup>th</sup> day of January, 2021 at San Francisco,  
22 California.

23  
24   
MICHELE VASS

25  
26 SF2003CV0729  
91323389.doc

# EXHIBIT A

## **EPA PIONEER METAL SETTLEMENT AGREEMENT**

This is a settlement agreement (“Settlement Agreement”) between Ricardo Lara, Insurance Commissioner of the State of California, in his capacity as Liquidator (the “Insurance Commissioner” or the “Liquidator”) of Western Employers Insurance Company (“WEIC”), the United States Environmental Protection Agency (“EPA”), by and through the United States Department of Justice (“DOJ”) (each a “Party,” and collectively the “Parties”), as to the claims resolved by this Settlement Agreement. The Parties have agreed to reach a compromise to avoid the expense and time of litigation and to facilitate the timely closing of the WEIC estate, without admission of liability and without admission of the ultimate validity or invalidity of any of the Parties’ positions or arguments.

WHEREAS, as part of this compromise, the Liquidator agrees to approve a proof of claim against WEIC at policyholder priority pursuant to California Insurance Code Section 1033 in favor of the EPA in the amount of \$ 1,200,000 (one million, two hundred thousand dollars) (the “Settlement Amount”) to resolve the EPA’s claims against WEIC regarding Pioneer Metal Finishing, Inc. (also known as and Pioneer Metal Finishing Co., Inc. and Pioneer Metal Finishing Company, Inc.), at the Pioneer Metals Finishing Superfund Site (the “Site”) in the manner and through the mechanism following and conditioned upon court approval provided herein, in full compromise of all claims of the EPA against WEIC for the Site relating to Pioneer Metal Finishing, Inc. as provided in this Settlement Agreement.

WHEREAS, WEIC was placed into liquidation on April 19, 1991 by the Superior Court of the State of California, County of Orange. The case was subsequently transferred to the Superior Court of the State of California, County of San Francisco (the “WEIC Liquidation Court”).

WHEREAS, the EPA assert claims pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, against Pioneer Metal Finishing Co., Inc. (“Pioneer Metal”).

NOW, THEREFORE, in consideration of all respective transactions contemplated by this Settlement Agreement, and the mutual covenants and representations herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Proof of Claim.** The EPA filed a proof of claim asserting a right to recover pursuant to Section 1026 of the California Insurance Code based on alleged Pioneer Metal liability under CERCLA Section 107 concerning liability at the Site. This Proof of Claim and this settlement agreement, upon court approval of this Agreement, shall resolve all claims of the EPA against WEIC arising from or related to Pioneer Metal Finishing, Inc. Site including but not limited to Proof of Claim 22019 filed by Pioneer Metal Finishing, Inc. and Proof of Claim 640058 filed by the United States (“Proof of Claim”).
2. **Policies.** The known policies pursuant to which the Proof of Claim is resolved are all WEIC policies which provide or may provide coverage in whole or in part to Pioneer Metal, its subsidiaries and affiliates against which the EPA have or may have a claim against pursuant to

Section 107 of CERCLA, including, without limitation, any claims against Policy Number UL 16-1284-11763 (“Policies”), which is the only policy the parties have identified.

3. **Dispute.** The Liquidator and the California Conservation and Liquidation Office dispute the claims for coverage, note that the insured’s proof of claim has previously been rejected, note the prior Federal Priority Statute Release Agreement dated May 11, 2015 with the United States, and further contests the right of the EPA to assert and file the Proof of Claim at this time. The Federal Claimants dispute the contention that the rejection of the insured’s proof of claim affect the Federal Claims or that the Proof of Claim was filed late. The United States asserts that the claims for coverage are meritorious.

4. **Resolution.** Consistent with the covenant not to sue, this Settlement Agreement is intended as a resolution, as provided in this Settlement Agreement, of all liabilities and obligations of WEIC to the EPA, as enumerated herein, including without limitation the Proof of Claim, and of all other rights of the EPA arising under CERCLA under the Policies issued by WEIC to Pioneer Metal, its subsidiaries and affiliates, whether listed in this Settlement Agreement or otherwise, past, present or future, known or unknown, vested or contingent. The EPA warrants that it holds the right to settle all liabilities and obligations of WEIC to the EPA referenced herein. This agreement resolves all claims under the Policies.

5. **Claim Allowance/Settlement Amount.** The EPA shall receive a claims approval policyholder priority pursuant to California Insurance Code Section 1033 in the total principal amount of \$ 1,200,000. For purposes of interest distribution(s), this proof of claim shall be deemed liquidated on July 8, 2020.

The total amount paid to EPA shall be deposited by EPA in the Pioneer Metal Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

6. **Precedent.** The claims approval in and/or the Settlement Amount to the EPA shall not be cited by any of the Parties in the future as a precedent, or as a basis for the treatment or priority of any claims in any subsequent insurance company receivership or rehabilitation proceeding. The Liquidator of WEIC does not concede by this Settlement Agreement that the Proof of Claim was timely filed or are otherwise valid or meritorious. Likewise, by agreeing to the compromise in this Settlement Agreement the EPA does not concede the validity or merit of any challenge to the Proof of Claim by the Liquidator.

7. **Payment Directions.** The Conservation and Liquidation Office will request payment instructions from DOJ via email to Joe.Davis@usdoj.gov and Rachel.Hankey@usdoj.gov. Defendant shall make payment by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of California. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to: Raymond J. Minehan, Chief Financial Officer, Conservation and Liquidation Office, Email: MinehanR@caclo.org; Mailing Address: P.O. Box 26894, San Francisco, CA

94126-6894; Street Address: 100 Pine Street, Suite 1200, San Francisco, CA 94111; Phone: (415) 676-5000.

At the time of payment, the Liquidator shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268, and Region II to [Elizabeth.LaBlanc@epa.gov](mailto:Elizabeth.LaBlanc@epa.gov); and to (ii) to the United States via email to Rachel A. Hankey, [Rachel.Hankey@usdoj.gov](mailto:Rachel.Hankey@usdoj.gov); The notice will say that the payment is pursuant to the Settlement Agreement in *In re Western Employers Insurance Company Proof of Claim: Pioneer Metal Finishing, Inc.* and shall reference the DOJ case number 90-11-3-10954/2.

8. **Allocation/Credit.** The EPA shall provide a settlement credit at the Site to Pioneer Metal Finishing, Inc. for the amount paid in connection with this agreement.

9. **Court Approval.** The Liquidator shall seek the approval of the WEIC Liquidation Court for this Agreement. In the event of a distribution, the Federal Claimants agree to provide to the Conservation and Liquidation Office upon request the information necessary to permit payment of distributions regarding the Settlement Amount to the Federal Claimants.

10. **The EPA's Covenant Not to Sue.**

a. In consideration of the execution of the Settlement Agreement, and effective upon approval of this Settlement Agreement by the WEIC Liquidation Court, the United States, on behalf of the EPA covenants not to file a civil action against the Insurance Commissioner, the California Department of Insurance, the California Conservation and Liquidation Office and WEIC with respect to all liabilities and obligations to Pioneer Metal Finishing, Inc. or the EPA arising under CERCLA under the Policies issued by the WEIC to Pioneer Metal Finishing, Inc., whether such liabilities and obligations are known or unknown, reported or unreported, and whether currently existing or arising in the future. As used in this paragraph and Paragraph 11, the terms Insurance Commissioner, the California Department of Insurance, the California Conservation and Liquidation Office and WEIC shall include their respective subsidiaries, affiliates, parent companies, successors and assigns, and their respective officers, directors, agents and employees each in their capacity as such.

b. With respect to the Policies, the EPA waives the benefits of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

c. The United States specifically reserves, and this Settlement Agreement, including the provisions of Paragraph 10.a, is without prejudice to (a) any action seeking to impose criminal liability, (b) any action based on the failure to meet a requirement of this Settlement Agreement, (c) any claim of the Federal Claimants based on the liability of Pioneer Metal Finishing, Inc. under any statute other than CERCLA, (d) any claim of any federal agency or department, other than EPA with respect to the Policies and (e) other than allocation/credit as outlined in Paragraph 8, nothing in this agreement shall affect any claim, including under

CERCLA, the Federal Claimants have against Pioneer Metal Finishing, Inc.

d. The covenant set forth in Paragraph 10.a extends only to the persons set forth in Paragraph 10.a and does not extend to any other person. The United States expressly reserves all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which it may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the Site or claims addressed herein. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement. This Settlement Agreement resolves a portion of the alleged liability of Pioneer Metal Finishing, Inc. under CERCLA, including such liability that may exist within the meaning of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for response costs with respect to Pioneer Metal Finishing, Inc. at the Site.

11. **The Liquidator's Covenant Not to Sue.** In consideration of the execution of this Settlement Agreement and the approval by the WEIC Liquidation Court, the Insurance Commissioner, the California Department of Insurance, the California Conservation and Liquidation Office and WEIC covenant not to sue the United States or any department or agency thereof, with respect to any liabilities and obligations to the Federal Claimants under any of Pioneer Metal Finishing, Inc.'s policies, whether such liabilities and obligations are known or unknown, reported or unreported, and whether currently existing or arising in the future, including, but not limited to, (a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507, (b) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, (c) any claims arising out of response activities at the Site, and (d) any claim to recover all or any part of the Settlement Amount set forth in Paragraph 5 of this Settlement Agreement. This covenant does not limit the Liquidator's right to sue for violations of this Agreement nor to assert any cause of action the Liquidator may have against any person or entity other than those claims expressly released in this Agreement.

12. **Costs.** Upon approval of this Settlement Agreement by the WEIC Liquidation Court, the EPA's Proof of Claim shall be fully resolved and terminated, with prejudice, with each Party bearing its own costs and fees in connection with the Proof of Claim and the negotiation and performance of this Settlement Agreement.

13. **Remedies.** In the event of a breach of the Settlement Agreement, the Parties shall have all rights and remedies available at common law or by applicable statute. The Parties reserve all rights and arguments concerning the appropriate forum to hear disputes arising from or related to the Settlement Agreement.

14. **Court Approval.** The Liquidator shall recommend this Settlement Agreement for approval to the WEIC Liquidation Court. The Liquidator advises the EPA that this Settlement Agreement will be submitted to the WEIC Liquidation Court, and the Parties agree that approval of the WEIC Liquidation Court is a condition precedent to the effectiveness of this Settlement Agreement, including the covenants set forth in Paragraphs 10-11. If the WEIC Liquidation Court approves this Agreement, then the United States shall have an approved policyholder



priority proof of claim in the amounts and in the allocation as set forth in Paragraph 5.

15. **Public Comment.** This Settlement Agreement shall be subject to a period of public comment following publication of notice of this Settlement Agreement in the Federal Register. The Federal Claimants reserve the right to withdraw or withhold their consent if the comments regarding this Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest. After the conclusion of the public comment period, the Federal Claimants will promptly notify the Liquidator in writing whether they consent to the Settlement Agreement and continue to seek its approval by the WEIC Liquidation Court.

16. **Withdrawal.** If for any reason (a) this Settlement Agreement is withdrawn or consent is withheld by the Federal Claimants as provided in Paragraph 15, or (b) the WEIC Liquidation Court voids or fails to enter a final order approving this Settlement Agreement, then: (i) this Settlement Agreement shall be null and void, and the Parties hereto shall not be bound under this 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.

17. **General.**

a. The Liquidator and the Federal Claimants further acknowledge that this Settlement Agreement is made solely for the consideration specified herein, without reliance on any statement, warranties, or representations by the Liquidator, WEIC, its agents or representatives, or by the EPA, other than any representations or warranties contained herein. This is not an agreement of the State of California to pay any sums, but instead creates only obligations on the part of WEIC.

b. All Parties understand and agree that this Settlement Agreement is a compromise in settlement of disputed liabilities and obligations, made to avoid the expense and time of litigation and to facilitate the timely closing of the WEICs estate, without admission of liability and without admission of the ultimate validity or invalidity of any of the Parties' positions or arguments.

c. This Settlement Agreement shall constitute the entire agreement between the Parties and may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever, except by written amendment duly executed by an authorized representative of each of the Parties.

d. This Settlement Agreement may be executed and delivered in multiple counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument and agreement. A pdf signature shall suffice as an original signature for purposes of this agreement.

e. Each undersigned representative of the Parties certifies that he or she is fully authorized,

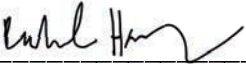
upon appropriate court approval where applicable, to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Party he or she represents to this document.

IN WITNESS WHEREOF, The Liquidator, acting on behalf of WEIC, and the EPA execute the Settlement Agreement by their duly authorized officers or representatives.

UNITED STATES OF AMERICA, Department of Justice on behalf of the Environmental Protection Agency

By: THOMAS MARIANI Digitally signed by THOMAS MARIANI  
Date: 2020.11.13 11:59:50 -05'00'  
Thomas A. Mariani, Jr.  
Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: November 13, 2020

By:   
Rachel Hankey  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(415)744-6471  
[Rachel.hankey@usdoj.gov](mailto:Rachel.hankey@usdoj.gov)

Date: November 16, 2020

IN WITNESS WHEREOF, The Liquidator, acting on behalf of the WEIC and the EPA execute the Settlement Agreement by their duly authorized officers or representatives.

Claimant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: CYNTHIA MACKEY Digitally signed by CYNTHIA  
MACKEY  
Date: 2020.10.06 12:07:27 -04'00' Date: \_\_\_\_\_  
Cyndy Mackey  
Office Director  
Office of Site Remediation Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

By: MEREDITH FISHBURN Digitally signed by MEREDITH  
FISHBURN  
Date: 2020.10.06 13:38:42 -04'00' Date: \_\_\_\_\_  
Meredith Fishburn  
Attorney-Advisor  
Office of Site Remediation Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

IN WITNESS WHEREOF, The Liquidator, acting on behalf of WEIC Trusts and the Federal Claimants, and Old Bridge execute the Settlement Agreement by their duly authorized officers or representatives.

THE INSURANCE COMMISSIONER AS LIQUIDATOR OF Western Employers Insurance Company

By: Joe Holloway \_\_\_\_\_ Date: October 6, 2020  
Joseph Holloway  
Chief Executive Officer, and not individually, signing on behalf of  
the Insurance Commissioner of the State of California as Liquidator of Western Employers  
Insurance Company, and not as an obligation of the State of California

Conservation and Liquidation Office  
100 Pine Street, Suite 2600  
San Francisco, CA 94111

Mailing Address: Conservation and Liquidation Office  
P.O. Box 26894  
San Francisco, CA 94126-6894