

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
) Plaintiff,) Civil Action No. C-3-91-309
)
) Judge Walter H. Rice
 v.)
)
) THE ATLAS-LEDERER COMPANY, *et al.*,)
)
) Defendants.)
_____)

**AMENDED CONSENT DECREE WITH SAUL SENSER, THE ESTATE OF SAUL
SENSER, KENNETH SENSER AS EXECUTOR FOR THE ESTATE OF SAUL SENSER,
AND SENSER METAL COMPANY, INC.**

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SENSER AS EXECUTOR FOR THE ESTATE OF SAUL SENSER, AND
SENSER METAL COMPANY, INC.

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter against Senser Metal Company, Inc. (“Senser Metal”) and other parties, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking, *inter alia*, reimbursement of costs incurred by EPA and the United States Department of Justice (“DOJ”) in responding to the release and/or threatened release of hazardous substances at the United Scrap Lead Superfund Site in Concord Township, Miami County, Ohio (the “Site”), together with accrued interest.

B. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the *Federal Register* of September 21, 1984 (49 Fed. Reg. 37,070).

C. In response to a release or a threat of a release of a hazardous substance at or from the Site, EPA, pursuant to 40 C.F.R. § 300.430, completed a Remedial Investigation (“RI”) Report in February 1988, and completed a Feasibility Study (“FS”) Report in August 1988.

D. Pursuant to CERCLA Section 117, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 29, 1988, in a major local newspaper of general circulation. EPA also published notice of the proposed plan for the amended remedial action on January 27, 1997, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on both the proposed original and amended plans for remedial action, and conducted public meetings to discuss the proposed remedial plans and obtain public comments. Copies of the transcripts of each public meeting are available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

E. In 1988, EPA selected a remedial action plan for the Site, which was embodied in a Record of Decision (“ROD”) signed by the Regional Administrator on September 30, 1988. EPA issued an Amended Record of Decision relating to the Site on June 27, 1997.

F. In 1991, EPA and certain parties entered into an Administrative Order on Consent which required the performance of certain response actions at the Site, including the installation of a fence. The respondents to the Administrative Order satisfactorily performed the response actions required under that Order in a manner consistent with the National Contingency Plan (“NCP”) and have satisfied all of the provisions of the Order.

G. The United States reached a separate settlement in this case with several of the Potentially Responsible Parties (“PRPs”) for the Site (herein referred to as the “Initial

Settlement”), pursuant to which they agreed to perform the Remedial Design/Remedial Action at the Site with EPA oversight and approval. This Initial Settlement is embodied in a Consent Decree entered by the court on September 28, 1998. The signatory defendants to the Initial Settlement, who are identified individually in Appendix B, shall herein be referred to as the “Respondent Group.”

H. In August 1998, the Court granted the Respondent Group’s motion to join new defendants in the United States’ cost recovery action pursuant to Fed. R. Civ. P. 20. Pursuant to the Second Case Management Order entered by the Court on September 15, 1998, the Plaintiff’s Complaint and the contribution cross-claims later filed by the Respondent Group were deemed to be asserted against each new defendant. United States consented to joinder as defendants of thirty-five of the other PRPs sued by the Respondent Group. At the Court’s direction, on September 28, 2001, the Respondent Group filed formal claims against these PRPs seeking contribution toward the cleanup pursuant to Section 113(f)(1), 42 U.S.C. § 9613(f).

I. In 2002, the United States sought leave to amend its complaint to add Saul Senser as a defendant in his individual capacity. Leave was granted in 2005. Saul Senser died in 2006, and the Court subsequently allowed the substitution of his Estate and the Executor of his Estate as defendants. The Respondent Group has not filed a contribution claim against Saul Senser or his Estate or his Executor, although it has filed such a claim against Senser Metal.

J. The United States and the Respondent Group have previously settled with a number of Defendants in Consent Decrees entered in this case on April 10, 2000, June 19, 2002, July 13, 2005, July 9, 2007, and January 23, 2009.

K. The United States has also commenced a related action against Saul Senser captioned United States v. Larry Katz et al., Case No. 3:05 CV 0058 (S.D. Ohio), alleging fraudulent conveyance of assets pursuant to the Federal Debt Collection Procedure Act (“FDCPA”), 28 U.S.C. §§ 3306, 3307 and the Federal Priority Act (“FPA”), 31 U.S. § 3713(a), which is being simultaneously resolved in a Stipulation, Settlement Agreement and Order in that case, a copy of which is attached hereto as Appendix D.

L. Defendants Saul Senser, the Estate of Saul Senser, (“Senser Estate”), Kenneth Senser as Executor for the Estate of Saul Senser, and Senser Metal Company, Inc. (“Settling Defendants”) do not admit any liability to Plaintiff or to the Respondent Group arising out of any alleged transactions or occurrences at the Site.

M. The United States, the Respondent Group, and the Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over the Settling Defendants. The Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, upon the Respondent Group and its constituent heirs, successors and assigns, and upon the Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but

not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Initial Settlement" shall mean the settlement reached between the United States on behalf of EPA and the Respondent Group embodied in a Consent Decree entered by the Court in this action on September 28, 1998.

h. "Interest" in relation to Section VI shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. §9607(a).

i. "National Contingency Plan" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to CERCLA Section 105, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States, the Respondent Group and the Settling Defendants.

l. "Past United States' Response Costs" shall mean all costs incurred by EPA and DOJ for response actions at or in connection with the Site not inconsistent with the National Contingency Plan, that EPA paid through the date of entry of this Consent Decree, plus Interest on all such costs that has accrued through such date.

m. "Past Respondent Group's Costs" shall mean all costs incurred by the Respondent Group at or in connection with the Site through the date of entry of this Consent Decree, plus Interest on all such costs that has accrued through such date.

n. "Plaintiff" shall mean the United States of America on behalf of EPA.

- o. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.
- p. The "Senser Estate Assets" shall mean the assets of the Estate of Saul Senser, including Family and Marital Trusts, a Defined Pension Plan, and various miscellaneous financial accounts under the control of the Senser Estate.
- q. The "Senser Heirs' Settlement Agreement" shall mean the agreement executed contemporaneously with this Consent Decree by Kenneth Senser as Executor of the Estate of Saul Senser, Kenneth Senser and Karen Cohn as Co-Trustees of trusts administered under the Third Restatement of the Saul Senser Trust dated October 19, 2001, Karen Cohn, individually, Beth Berger individually, Kenneth Senser, individually, and Ruth Senser.
- r. The "Settling Defendants" shall mean Saul Senser, the Estate of Saul Senser, Kenneth Senser as Executor of the Estate of Saul Senser, and Senser Metal Company, Inc.
- s. "Site" shall mean the United Scrap Lead Superfund site, encompassing approximately 25 acres, located at 2117 South County Road 25A, in Concord Township, Miami County, Ohio, and depicted more clearly on the map included in Appendix A.
- t. "Respondent Group" shall mean those parties identified in Appendix B.
- u. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. REIMBURSEMENT OF COSTS

4. Payment of Past United States' Costs to the EPA Hazardous Substance Superfund.
- a. Settling Defendants have liquidated the assets of the Senser Estate, withheld or otherwise provided for income taxes due from the Senser Estate, provided for the needs of Saul Senser's widow, Ruth Senser, in the Senser Heirs' Settlement Agreement, established an interest-

bearing escrow account in a bank duly chartered in the State of Ohio (“Escrow Account”), and remitted to that Escrow Account funds in the amount of not less than Eight Hundred Thousand, Three Hundred and Sixty Nine Dollars (\$804,369.00), representing all the remaining assets of the Senser Estate (the “Senser Estate Assets”) and accrued interest, except for \$7,875.00 reserved in a certain pension fund to cover the final costs of closing that fund. Settling Defendants have provided to the United States an accounting of the Senser Estate Assets and other financial documentation attesting to the total value of the Senser Estate. Settling Defendants also have provided copies of the documents establishing and funding the Escrow Account, including identification of the bank and the escrow agent, the bank account number, the interest rate, and a bank statement or deposit slip showing the balance of the escrow account. Counsel for Settling Defendants, Buckingham, Doolittle & Burroughs, LLP, is serving as escrow agent for the Escrow Account with the consent of the United States.

b. All funds paid into the Escrow Account by the Settling Defendants shall remain in escrow and shall not be withdrawn by any person except to make the following payments:

i. Payments required following the entry of this Consent Decree pursuant to Paragraph 4(c) and 5 of this Decree;

ii. The payment required by the Stipulation, Settlement Agreement and Order to be filed in the companion case to this action, United States v. Larry Katz et al, Case No. 3:05-CV-0058, upon the entry of this Consent Decree;

iii. The payments authorized by Paragraph 4(d) of this Consent Decree for the expenses of the Senser Estate identified in Appendix C to this Consent Decree;

iv. The final payment to the United States pursuant to Paragraph 4(e) of this Consent Decree.

If the Court declines to enter the Consent Decree, all sums in the Escrow Account shall be returned to Settling Defendants, together with any accrued interest thereon.

c. Within thirty (30) Days of entry of this Consent Decree, and if Ruth Senser is living at the time the Consent Decree is entered, the Settling Defendants shall pay to the EPA Hazardous Substance Superfund the amount of Two Hundred Forty Three Thousand, Two Hundred and Fifty Dollars (\$243,250.00). In the event that Ruth Senser is not living as of the date of entry of this Consent Decree, this payment shall be augmented by fifty percent (50%) of the amount that is returned to the Senser Estate pursuant to the Senser Heirs' Settlement Agreement executed contemporaneously with this Consent Decree, with the balance to be disbursed by the Senser Estate for the payment of any outstanding attorneys' fees and for distribution to the remaining heirs of the Senser Estate. The payment to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 9124845, the EPA Region and Site Spill ID Number 05H5, DOJ Case Number 90-11-3-279B, and the name and address of the party making the payment. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Ohio following the lodging of this Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XII (Notices and Submissions). The total amount to be paid pursuant to this Paragraph shall be deposited in the EPA Hazardous Substance Superfund. Settling Defendants shall be jointly and severally liable to the United States for this payment.

d. Within fourteen (14) Days after making the payments required pursuant to Paragraphs 4(c) and 5 of this Consent Decree, Settling Defendants shall make payments for the expenses of the Senser Estate authorized by Appendix C to this Consent Decree.

e. Within ten (10) Days after the Settling Defendants have completed making payments for the expenses identified in Appendix C, Settling Defendants shall submit to the United States an accounting of the Escrow Account showing all deposits, interest, and payments made, and shall remit any remaining balance in the Escrow Account to the United States in accordance with the procedure specified in Paragraph 4(c).

f. Within ten (10) Days after submitting to the United States its accounting of the Escrow Account and any remaining balance in the Escrow Account, the United States shall send to the Settling Defendants an original signed copy of the Satisfaction of Claim attached hereto and made a part hereof as Appendix E, for filing with the Probate Court of Summit County, Ohio, and the Settling Defendants agree to forward to the United States a copy of said Satisfaction of Claim evidencing such filing.

5. Payment of Past Respondent Group's Costs to the Respondent Group. Within thirty (30) Days of entry of this Consent Decree, Settling Defendants shall pay the amount of Twenty One Thousand Five Hundred (\$21,500.00) to the Respondent Group, c/o Michael A. Cyphert, Walter & Haverfield LLP, 1301 East Ninth Street, Suite 3500, Cleveland, OH 44114- 1821. Settling Defendants shall send a copy of the check referenced above and any transmittal letter accompanying the check to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; Chief, Superfund Office, Office of Regional Counsel, EPA Region V, ATTN: United Scrap Lead Salvage Site, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

6. Interest on Late Payments. In the event that any payments required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 7 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

7. Stipulated Penalty.

a. If any amount due to be paid under this Consent Decree is not paid by the required date, Settling Defendants shall pay as a stipulated penalty to EPA, in addition to the Interest required by Paragraph 6, five hundred dollars (\$500) per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, IL 60673

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, USAO file number 9124845, EPA Region 5, and Site/Spill ID No. 05H5, and U.S. DOJ case number 90-11-3-279B. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to EPA and DOJ as provided in Section XII (Notices and Submissions).

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of a violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall

continue to accrue until receipt by EPA or the Respondent Group of the payment due. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. If the United States brings an action to enforce a payment under this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

9. Payments made under Paragraphs 6-8 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Settling Defendants' failure to comply with the requirements of this Consent Decree. Settling Defendants shall be jointly and severally liable to the United States for any interest, penalties or attorney's fees, or other remedies or sanctions authorized by this Section.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. CERTIFICATIONS BY SETTLING DEFENDANTS

11. In order to induce the Plaintiff to enter into this settlement, the Settling Defendants, by their signatures hereto, affirm, to the best of their knowledge and belief, the following:

- a. Each Settling Defendant (other than Dr. Kenneth Senser) has conducted a thorough, comprehensive, good faith search for, and has fully and accurately disclosed to EPA, all information currently in the possession, custody or control of it or its officers, directors, employees, contractors or agents, that relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;
- b. Settling Defendants have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to Settling Defendants' potential liability regarding the Site, after notification of

potential liability or the filing of a suit against the Settling Defendants regarding the Site;

- c. Settling Defendants have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);
- d. Settling Defendants have provided to EPA all material information of which they are aware relating to the finances, assets, insurance coverage, and all other matters related to the resources available to Settling Defendants;
- e. The information described in Subparagraphs a, c, and d above is true and accurate; and
- f. Settling Defendants neither possess nor know of any other documents or information that would suggest that Settling Defendants have in their possession, custody or control, other assets, income or any interests at all in property of any kind that could be used to reimburse the EPA Hazardous Substances Superfund or the Respondent Group for response costs incurred or to be incurred at the Site.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

12. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 13 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to the Site. This covenant not to sue shall take effect upon receipt of all payments required of the Settling Defendants by Section V, Paragraphs 4 (Payment of Past United States' Costs to the EPA Hazardous Substance Superfund) and 5 (Payment of Past Respondent Group's Costs to the Respondent Group) and Section VI, Paragraphs 6 (Interest on Late Payments) and 7 (Stipulated Penalty). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

13. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 12 does not pertain to any matters other than those expressly specified therein. The

United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

- a. liability for failure of the Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Decree.

14. The covenant set forth in Paragraph 12 is contingent upon the veracity of the certifications made by the Settling Defendants in Paragraph 11 herein. Any misrepresentation, misstatement or material omission by the Settling Defendants in the certification made in Paragraph 11, upon written notice by the United States to the Settling Defendants, renders the covenant not to sue void. If there is a dispute as to whether there has been any misrepresentation, misstatement, or material omission by the Settling Defendants, the dispute shall be referred to the Court, which shall rule on such dispute under applicable principles of law. Following the voiding of any covenant not to sue pursuant to this Paragraph, in any action brought by the United States against the Settling Defendants, the Settling Defendants shall not raise any defenses based in whole or in part on the time elapsed between the entry of this Consent Decree and the commencement of such action by the United States, including but not limited to defenses based upon any statute of limitations, laches, waiver, estoppel, or lack of jurisdiction.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

15. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at the Site for which the Past United States' Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Ohio, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against any previously settling party in this action, including the Respondent Group or its contractors, or against any current party in this action, with respect to the Site or this Consent Decree, including but not limited to:

- a. any claim arising out of response actions at the Site; and
- b. any claim against the Respondent Group or any previously settling party or current party to this action, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

17. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against

any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Defendants may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against the Settling Defendants. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

18. Nothing in this Consent Decree shall be deemed to constitute approval or 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).

X. COVENANT NOT TO SUE BY RESPONDENT GROUP

19. The Respondent Group covenants not to sue and agrees not to assert any claims or causes of action against Settling Defendants with respect to the Site, including any asserted pursuant to Section 107(a) or Section 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, with respect to the Site. This covenant not to sue shall take effect as to the Settling Defendants upon receipt of all payments required of Settling Defendants by Section V, Paragraph 5 (Payment of Past Respondent Group's Costs to the Respondent Group) and Section VI, Paragraph 6 (Interest on Late Payments). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraphs 12, 15-17 and 19, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. For purposes of this Section, and except as provided in Paragraph 13, the "matters addressed" in this Consent Decree shall be the Settling Defendants' liability pursuant to CERCLA for Response Costs incurred or to be incurred by the United States, or by any other potentially responsible person with respect to the Site.

22. The Settling Defendants agree that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, they will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon them. In addition, the Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Defendants 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 in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

24. This Consent Decree shall not alter in any way the terms and conditions of the Initial Settlement which shall remain in full force and effect, except to the extent that Paragraph 19 of this Consent Decree modifies Paragraph 99 of the Initial Settlement.

XII. NOTICES AND SUBMISSIONS

25. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to

the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Respondent Group, and the Settling Defendants, respectively.

As to the United States:

As to DOJ and EPA

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ #90-11-3-279B

Sherry L. Estes
Mail Code C-14J
Associate Regional Counsel
ATTN: United Scrap Lead Salvage Site
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

Richard C. Karl
Director, Superfund Division
ATTN: United Scrap Lead Salvage Site
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

As to the Respondent Group:

Michael A. Cyphert
Walter & Haverfield LLP
1301 East Ninth Street, Suite 3500
Cleveland, OH 44114-1821

As to Settling Defendants:

Matthew Yackshaw
Day Ketterer Ltd.
Millennium Centre-Suite 300
200 Market Avenue North
P.O. Box 24213
Canton, OH 44701-4213

XIII. RETENTION OF JURISDICTION

26. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDICES

27. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: “Appendix A” is the map of the Site; “Appendix B” is the complete list of the Respondent Group, “Appendix C” is the schedule of Senser Estate Expenses; Appendix D is the Stipulation, Settlement Agreement and Order between the United States and Saul Senser, the Estate of Saul Senser, and Kenneth Senser as Executor of the Estate of Saul Senser to be filed in United States v. Larry Katz et al., Case No. 3:05 CV 0058 (S.D. Ohio), upon entry of this Consent Decree; and Appendix E is form of Satisfaction of Claim to be filed with the Probate Court of Summit County, Ohio upon entry of this Consent Decree.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

28. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice.

29. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. EFFECTIVE DATE

30. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVII. SIGNATORIES/SERVICE

31. The undersigned representatives of the Respondent Group, the Settling Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

32. The Settling Defendants and the Respondent Group hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

33. The Settling Defendants agree to accept service of process with respect to all matters arising under or relating to this Consent Decree through mail sent to the following authorized agent:

Matthew Yackshaw
Day Ketterer Ltd.
Millennium Centre-Suite 300
200 Market Avenue North
P.O. Box 24213
Canton, OH 44701-4213

Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

34. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

XVIII. FINAL JUDGMENT

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the Respondent Group, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. 54 and 58.

SO ORDERED THIS 17th DAY OF March, ~~2012~~
2013

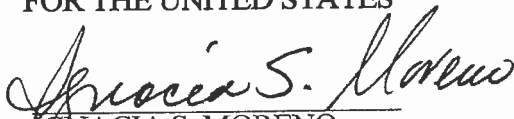


WALTER HERBERT RICE
United States District Judge

WE HEREBY CONSENT to the entry of the Consent Decree in the matter of United States v. The Atlas-Lederer Co. et al., relating to the United Scrap Lead Superfund Site, subject to the public notice requirements of 28 C.F.R. § 50.7.

Date: 12/27/12

FOR THE UNITED STATES



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Assistant Attorney General
Environment and Natural Resources Division



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for Donald J. Bruce

RICHARD KARL

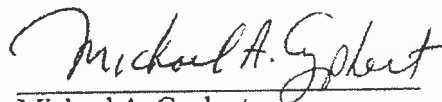
Director of Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
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Sherry L. Estes

SHERRY L. ESTES

Associate Regional Counsel
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FOR THE UNITED SCRAP LEAD
RESPONDENT GROUP



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Attorney for Respondent Group

FOR SENSER METAL COMPANY, INC., SAUL
SENSER, THE ESTATE OF SAUL SENSER,
AND KENNETH SENSER AS EXECUTOR
FOR THE ESTATE OF SAUL SENSER



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Attorney for Settling Defendants
Senser Metal Company, Inc., Saul Senser, The
Estate of Saul Senser, and Kenneth Senser as
Executor for the Estate of Saul Senser