

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
Roanoke Division

In re:	)	
	)	Chapter 11
RBX Corporation, <i>et al.</i> , <sup>1</sup>	)	Case No. 7-01-00436 WSR
	)	(Jointly Administered)
Debtors.	)	
	)	

**ORDER GRANTING MOTION OF THE DEBTORS TO APPROVE SETTLEMENT OF  
CLAIM OBJECTION WITH OHIO ENVIRONMENTAL PROTECTION AGENCY**

This matter came before the Court on the motion (the "Motion") of the Reorganized Debtors and Debtors in Possession in the above referenced bankruptcy cases (the "Debtors") for entry of an order pursuant to § 105 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure authorizing the Debtors to enter into the Settlement Agreement and Release (the "Agreement") between the Debtors and the Ohio Environmental Protection Agency (the "Ohio EPA") attached as an exhibit to the Motion. The Court finds that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion was sufficient and proper under the circumstances, and (d) the Debtors' entry into and performance of the Agreement is in the best interests of the Debtors' estates and creditors and represents the sound exercise of the Debtors' business judgment. The Court further determines that the legal and factual bases set forth in the Motion and the record of

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<sup>1</sup> The Debtors are the following entities: RBX Industries, Inc., RBX Corporation ("RBX Corp."), RBX Group, Inc. ("RBX Group"), Rubatex Corporation ("Rubatex"), Waltex Corporation ("Waltex"), Groendyk Manufacturing Company, Inc. ("Groendyk"), UPR Disposition, Inc. ("UPR"), Universal Rubber Company ("Universal"), OleTex, Inc. ("Oletex"), Midwest Rubber Custom Mixing Corp. ("Midwest"), and Hoover-Hanes Rubber Custom Mixing Corp. ("Hoover-Hanes").

these cases establish just cause for the relief granted herein. Accordingly, it therefore appearing just and proper to do so, it is hereby

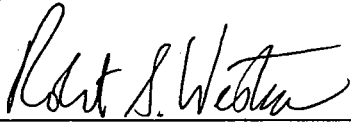
ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.
2. All objections to the Motion or the relief requested therein, if any, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.
3. The Agreement and all of its terms and conditions are hereby approved.
4. The Debtors are authorized to execute and deliver, and empowered to perform under, consummate and implement, the terms of the Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement, and to take all further actions as may be reasonably necessary or appropriate to the performance of the obligations contemplated by the Agreement.
5. The Clerk is directed to forward a copy of this Order as entered to counsel for the Debtors at the address below who shall serve the entered Order pursuant to the Local Rules.

ENTER: 06/10/03

William F. Howe, Jr.  
United States Bankruptcy Judge

WE ASK FOR THIS:

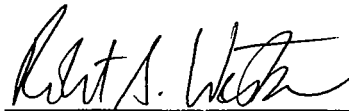


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**CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2003, a true and complete copy of the foregoing was sent by first class mail, postage prepaid, to all creditors and parties in interest on the Debtors' Rule 2002 Service List and to counsel for the Ohio EPA.



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Roanoke Division**

<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>RBX Corporation, et al.,</b>	:	<b>Case No. 7-01-00436 WSR</b>
	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.</b>	:	
	:	

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the "Agreement"), dated as of May 15, 2003, is entered into by and between RBX Industries, Inc. ("RBX Industries"), RBX Corporation ("RBX Corp."), RBX Group, Inc. ("RBX Group"), Rubatex Corporation ("Rubatex"), Waltex Corporation ("Waltex"), Groendyk Manufacturing Company, Inc. ("Groendyk"), UPR Disposition, Inc. ("UPR"), Universal Rubber Company ("Universal"), OleTex, Inc. ("Oletex"), Midwest Rubber Custom Mixing Corp. ("Midwest"), Hoover-Hanes Rubber Custom Mixing Corp. ("Hoover-Hanes") (collectively, the "Debtors") and the State of Ohio, by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.

**RECITALS**

A. On December 5, 2000, Franklin Income Series Fund, Franklin Valuemark Income Series Fund, and Foothill Partners III, L.P. filed an involuntary bankruptcy petition against RBX Corp. under chapter 11 of the Bankruptcy Code in the United States

District Court for the District of Delaware (either the District Court or the Bankruptcy Court for said District, the "Delaware Court"). On December 7, 2000 (the "Petition Date"), RBX Corp. filed its Answer to Involuntary Petition and Consent to Entry of Order for Relief. Also, on December 7, 2000, RBX Group, Inc., Rubatex Corporation, Waltex Corporation, Groendyk Manufacturing Company, Inc., UPR Disposition, Inc., Universal Rubber Company, OleTex, Inc., Midwest Rubber Custom Mixing Corp., and Hoover-Hanes Rubber Custom Mixing Corp. each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Delaware Court.

B. Upon motion by the City of Bedford, Virginia, and by order dated January 30, 2001, as amended, the Delaware Court transferred these chapter 11 cases to the Bankruptcy Court for the Western District of Virginia pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 1014. The Debtors are continuing to operate their businesses and manage their property as debtors in possession pursuant to Bankruptcy Code Sections 1107 and 1108.

C. On or about April 23, 2001, the Ohio EPA filed a priority, administrative proof of claim in the amount of \$20,000,000.00, claim # 1143 (the "Ohio EPA Claim"). The Ohio EPA Claim is based on alleged environmental cleanup and other costs relating to the Debtors' former Midwest facility in Ohio.

D. The Bankruptcy Court confirmed the Debtors' plan of reorganization by Order entered on July 17, 2001 (the "Plan"), and the Plan became effective on August 27, 2001 upon the closing of the exit financing facility with Congress Financial Corporation.

E. On or about September 19, 2001, the Debtors filed and served their Objections to Claims; Order and Notice of Opportunity for Hearing (the "Claims

Objections”), and one of the proofs of claim included in the Claims Objections was the Ohio EPA Claim. The Ohio EPA filed a response to the Debtors’ objection to the Ohio EPA Claim on or about November 15, 2001.

F. On August 12, 2002, the Court, following a telephonic status conference, entered a Pretrial Order relating to the Debtors’ objection to the Ohio EPA Claim. In the Pretrial Order, the Court set a discovery cutoff of January 10, 2003, and a trial date for February 5, 2003.

G. Subsequently, the Debtors and the Ohio EPA requested that the discovery cutoff and trial date be continued. By Order entered on March 14, 2003, the Court continued the discovery cutoff to March 24, 2003 and set the trial for April 23-25, 2003.

H. The Debtors and the Ohio EPA have agreed that it is in their mutual best interests to compromise and settle all issues and disputes existing among them concerning the Ohio EPA Claim and the Debtors’ objection thereto, and the terms of that settlement are contained within this Agreement.

In consideration of the foregoing premises, the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions herein, the parties hereby covenant and agree as follows:

#### **DEFINITIONS**

Whenever the following terms are used in this Agreement, the following definitions apply:

- A. “Bankruptcy Court” means the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division.

- B. "Debtors" means RBX Industries, Inc. (the Reorganized RBX, as substantively consolidated on and after the effective date of the Plan and as defined in Article 1.1.98 of the Plan), RBX Corporation, RBX Group, Inc., Rubatex Corporation, Waltex Corporation, Groendyk Manufacturing Company, Inc., UPR Disposition, Inc., Universal Rubber Company, OleTex, Inc., Midwest Rubber Custom Mixing Corp., and Hoover-Hanes Rubber Custom Mixing Corp.
- C. "Effective Date" means the date on which an Order entered by the Bankruptcy Court approving this Agreement becomes a final Order.
- D. "Hazardous Substances" shall have the same meaning as set forth in 42 U.S.C. § 9601(14).
- E. "Hazardous Wastes" shall have the same meaning as set forth in R.C. Section 3734.01(J).
- F. "Industrial Wastes" shall have the same meaning as set forth in R.C. Section 6111.01(C).
- G. "October 22, 1990 Asset Purchase Agreement" means the Asset Purchase Agreement between RBX Holdings Inc., RBX-Rubatex Inc., RBX-Groendyk Inc., RBX-Universal Inc., RBX-Polymer Inc., RBX-Waltex Inc., RBX-Empire Chem Inc. – Buyers and the Holding Company and Great American Industries, Inc., Empire Industries, Inc., Rubatex Corporation, Groendyk Manufacturing Company, Inc., Universal Rubber Company, Rubatex Polymer, Inc., Bondtex, Inc., Waltex Corporation,

Empire Chem, Inc. – Sellers and the Sellers' Stockholders dated October 22, 1990.

- H. "Ohio EPA" means the Ohio Environmental Protection Agency.
- I. "Other Wastes" shall have the same meaning as set forth in R.C. Section 6111.01(D).
- J. "Party" or "Parties" means the Ohio EPA and the State and/or the Debtors.
- K. "Person" or "Persons" shall have the same meaning and include all persons as set forth in R.C. Sections 1.59, 3734.01 (G), and 6111.01(I).
- L. "R.C." means the Ohio Revised Code.
- M. "Site" means the Midwest Rubber manufacturing facility of approximately 91 acres located at 745 Norton Ave., Barberton, Ohio.
- N. "Solid Waste" shall have the same meaning as set forth in R.C. Section 3734.01(E).
- O. "State" means the State of Ohio, by and through its Attorney General on behalf of the Ohio EPA.

#### **PARTIES BOUND**

This Agreement applies to and is binding upon the State and upon the Debtors, and their parents, affiliates, subsidiaries, officers, directors, agents, employees, attorneys, successors, and assigns. The undersigned representative of each Party to this Agreement certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of this Agreement and to execute and legally bind that Party to it.



**PAYMENTS BY THE DEBTORS TO SETTLE THE OHIO EPA CLAIM**

1. In settlement of the Ohio EPA Claim and the Debtors' objection thereto, the State shall be granted an allowed administrative priority claim in the amount of Five Hundred, Fifty Thousand Dollars (\$550,000.00). The Parties agree that this amount shall be paid by the Debtors, in full, pursuant to the following payment schedule:

- A. A first payment of \$150,000.00 within sixty (60) days after the Effective Date.
- B. A second payment of \$50,000.00 by December 31, 2003.
- C. Ten payments of \$35,000.00 each (totaling the remaining \$350,000.00) by the following dates: March 31, 2004 (third payment); June 30, 2004 (fourth payment); September 30, 2004 (fifth payment); December 31, 2004 (sixth payment); March 31, 2005 (seventh payment); June 30, 2005 (eighth payment); September 30, 2005 (ninth payment); December 31, 2005 (tenth payment); March 31, 2006 (eleventh payment); and June 30, 2006 (twelfth and final payment).

2. The payments made by the Debtors pursuant to paragraph 1. above shall be made in the form of a certified or cashier's check payable to "Treasurer, State of Ohio" and sent to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049. The Debtors shall send a copy of the transmittal letter and a copy of the check to: Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell or her successor; to the Ohio EPA Site Coordinator Michael Bolas or his successor at Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087; and to the Assistant Attorney General representing the State in this matter at

Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400.

**RELEASE AND COVENANT NOT TO SUE**

3. The State upon receipt of the sums to be distributed under paragraphs 1. and 2. above, and in consideration of the mutual promises and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby fully and forever releases, remises, acquits and discharges the Debtors from all environmental actions, including causes of action, suits, damages, losses, obligations, sums of money, attorneys' fees, claims, liabilities, and demands whatsoever, that could have been brought under any state or federal environmental statute and/or the common law that the State ever had or now has against the Debtors, up to and including the date of this Agreement.

4. The release set forth in paragraph 3 above, shall also apply to the Debtors' respective parents, subsidiaries, affiliates, officers, directors, agents, employees, attorneys, predecessors, successors, and assigns but only to the extent that the alleged environmental liability of Debtors' respective parents, subsidiaries, affiliates, officers, directors, agents, employees, predecessors, attorneys, successors, and assigns is based solely on their status as and in their capacity as a parent, subsidiary, affiliate, officer, director, agent, employee, attorney, predecessor, successor, and/or assign of Debtors and not to the extent that the alleged environmental liability arose independently of the alleged environmental liability of the Debtors. By way of example, and not limitation, the alleged environmental liability of MBS Chem, Inc., Empire Chem, Inc., Davis Street Partnership, D.S. OH Limited Partnership, any past, current, or future owner of the Site,

any operator of the Site prior to October 22, 1990, any operator of the Site after the Debtors discontinued Site operations on or about late 2001 or early 2002, and/or any predecessor of the Debtors that owned and/or operated the Site, has arisen independently of the alleged environmental liability of the Debtors.

5. In consideration of the payments made by the Debtors pursuant to paragraphs 1. and 2. above, the State covenants not to sue the Debtors for any claims or causes of action of any kind or nature, whether now existing or hereafter arising out of the past disposal and/or discharge of Solid Wastes, Hazardous Wastes, Hazardous Substances, Industrial Wastes, Other Wastes, and/or any other substance, material, or contaminant at the Site, including any past, present, or future releases or threatened releases of these wastes, substances, materials, contaminants, and/or constituents at and from the Site – including Wolf Creek, the Wolf Creek sediments, or the ground water underlying or emanating at and from the Site.

6. The covenant not to sue, set forth in paragraph 5. above, shall also apply to the Debtors' respective parents, affiliates, subsidiaries, officers, directors, agents, employees, attorneys, predecessors, successors, and assigns, but only to the extent that the alleged environmental liability of the Debtors' respective parents, affiliates, subsidiaries, officers, directors, agents, employees, attorneys, predecessors, successors, and assigns is based solely on their status as and in their capacity as a parent, affiliate, subsidiary, affiliate, officer, director, agent, employee, attorney, predecessor, successor, and/or assign of the Debtors and not to the extent that the alleged environmental liability arose independently of the alleged environmental liability of the Debtors. By way of example, and not limitation, the alleged environmental liability of MBS Chem, Inc.,

Empire Chem, Inc., Davis Street Partnership, D.S. OH Limited Partnership, any past, current, or future owner of the Site, any operator of the Site prior to October 22, 1990, any operator of the Site after the Debtors discontinued Site operations on or about late 2001 or early 2002, and/or any predecessor of the Debtors that owned and/or operated the Site, has arisen independently of the alleged environmental liability of the Debtors.

7. If the Debtors, for any reason, fail to make the payments to the State as set forth in paragraphs 1. and 2. above, the release and the covenant not to sue contained in paragraphs 3., 4. 5. and 6. above shall not apply to nor affect any action by the State to (a) seek the necessary relief from the Bankruptcy Court, or any court of appropriate jurisdiction, to effectuate or enforce compliance with the terms of this Agreement, and (b) seek the necessary relief from any court of appropriate jurisdiction against the Debtors and/or Debtors' respective parents, subsidiaries, affiliates, officers, directors, agents, employees, attorneys, predecessors, successors, and assigns to enforce any state or federal environmental claims regarding the Site.

8. The release and covenant not to sue contained in paragraphs 3., 4., 5. and 6. above does not extend to any criminal claims and/or actions.

**STATE RESERVATION OF RIGHTS/EFFECT OF SETTLEMENT**

9. The State reserves all state and federal claims or causes of action against any Person and/or Persons, other than those Persons covered by the release and covenant not to sue contained in paragraphs 3., 4., 5., and 6. above, of any kind or nature, whether now existing or hereafter arising out of the past, present, or future disposal and/or discharge of Solid Wastes, Hazardous Wastes, Hazardous Substances, Industrial Wastes,

Other Wastes, and/or any other substance, material, or contaminant at the Site, including any past, present, or future releases or threatened releases of these wastes, substances, materials, contaminants, and/or constituents at and from the Site – including Wolf Creek, the Wolf Creek sediments, or the ground water underlying or emanating at and from the Site. The Person and/or Persons to which the State's Reservation of Rights extends, include but are not limited to: (a) any past, current, or future owner of the Site property, (b) any past, present, or future operator of the Site, (c) any past, present, or future generator of any type of waste, material, substance, or contaminant upon the Site, (d) any Person for which the Debtors have entered into an indemnification, hold harmless, or similar agreement, including but not limited to any Person or Persons from which the Debtors have purchased assets at the Site, including but not limited to the sellers identified in the October 22, 1990 Asset Purchase Agreement, and/or (e) any predecessor of the Debtors that owned and/or operated the Site.

10. This Agreement, which requires Bankruptcy Court approval, does not release, remise, acquit, and/or discharge any Person and/or Persons to which the State's Reservation of Rights extends as set forth in paragraph 9. above, but only reduces the potential liability of such Person and/or Persons by the amount of this settlement.

#### **CONTRIBUTION PROTECTION**

11. Provided that the payments are made to the State as provided in paragraphs 1 and 2 above, the Debtors are entitled to protection from contribution actions or claims as is provided in 42 U.S.C. § 9613(f)(2) and under all related state statutes. This contribution protection shall apply to the Debtors and the Debtors' respective parents, affiliates, subsidiaries, officers, directors, agents, employees, attorneys,

predecessors, successors, and assigns, but only to the extent that the alleged liability of the Debtors' respective parents, affiliates, subsidiaries, officers, directors, agents, employees, attorneys, predecessors, successors, and assigns is based solely on their status as and in their capacity as a parent, affiliate, subsidiary, officer, director, agent, employee, attorney, predecessor, successor, and/or assign of the Debtors and not to the extent that the alleged liability arose independently of the alleged liability of the Debtors.

### **RETENTION OF JURISDICTION**

12. The Bankruptcy Court (or, upon withdrawal of the reference, the U.S. District Court for the Western District of Virginia) shall retain jurisdiction over the subject matter of this Agreement and the Parties hereto for the duration of the performance of the terms and conditions of this Agreement for the purpose of enabling any of the Parties to apply to the Bankruptcy Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Agreement or to effectuate or enforce compliance with its terms.

### **GENERAL PROVISIONS**

13. To the extent that there is any inconsistency and/or contradiction between the provisions of the Plan and this Agreement, the language of this Agreement shall control and shall be binding on the Parties.

14. This Agreement constitutes the entire agreement of the Parties and shall not be amended or modified except by written amendment signed by the Parties and approved by the Bankruptcy Court.

15. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which constitute one and the same instrument.

16. Except to the extent that the provisions of the United States Bankruptcy Code may apply, the validity, meaning, and effect of this Agreement will be determined in accordance with the laws of the State of Ohio.

17. The preamble and preliminary recitals of this Agreement are hereby incorporated in and made part of this Agreement.

18. The effectiveness of this Agreement is conditioned upon the entry of an Order by the Bankruptcy Court approving the terms of the Agreement as set forth herein.

19. Each of the Parties hereto agree and acknowledge that the mutual promises contained herein, the consideration paid pursuant to this Agreement, and the releases granted herein all serve as consideration for each Party to this Agreement and constitute an integrated settlement.

20. The Parties each warrant and represent that it has not assigned, transferred, or conveyed any rights or claims it may have against any other Party hereto to any other Person.

21. The Parties agree and acknowledge that this Agreement evidences the settlement and compromise of disputed claims and that it is not to be construed as an admission of liability or wrongdoing by any Party hereto.

22. This Agreement may not be modified except by written consent of the Parties.

23. This Agreement shall be deemed to have been jointly drafted by the Parties.

24. Each Party hereto has reviewed the releases, monetary obligations, and all other provisions contained in this Agreement and warrants that he/she has

completely read this Agreement, fully understands its contents, and intends to be bound thereby.

In witness whereof, each of the undersigned has executed this Agreement as of the date indicated above.

## DEBTORS

RBX Industries, Inc., RBX Corporation, RBX Group, Inc., Rubatex Corporation  
Waltex Corporation, Groendyk Manufacturing Company, Inc.,  
UPR Disposition, Inc., Universal Rubber Company, OleTex, Inc.,  
Midwest Rubber Custom Mixing Corp., Hoover-Hanes Rubber Custom Mixing Corp.

By:

  
Timothy J. Bernlohr

Their: President & Chief Operating Officer 

## STATE OF OHIO

By:

OHIO ENVIRONMENTAL  
PROTECTION  
AGENCY

By:

JIM PETRO  
ATTORNEY GENERAL OF OHIO

\_\_\_\_\_  
Cynthia Hafner  
Chief, Division of Emergency and  
Remedial Response  
122 South Front Street  
Columbus, Ohio 43216-1049

\_\_\_\_\_  
Timothy J. Kern (0034629)  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3400  
(614) 466-2766



completely read this Agreement, fully understands its contents, and intends to be bound thereby.

In witness whereof, each of the undersigned has executed this Agreement as of the date indicated above.

## DEBTORS

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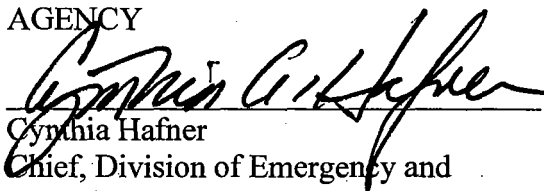
By: \_\_\_\_\_

Their: \_\_\_\_\_

## STATE OF OHIO

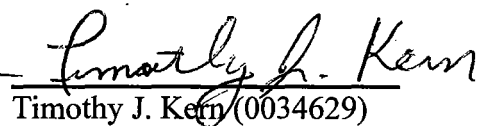
By:

OHIO ENVIRONMENTAL  
PROTECTION  
AGENCY

  
Cynthia Hafner  
Chief, Division of Emergency and  
Remedial Response  
122 South Front Street  
Columbus, Ohio 43216-1049

By:

JIM PETRO  
ATTORNEY GENERAL OF OHIO

  
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