

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the U.S. General Services Administration (collectively the “United States”), RPM International Inc. (RPM), Tremco Incorporated (Tremco), and Gregory Rudolph (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Tremco, an Ohio corporation headquartered in Beachwood, Ohio, is a manufacturer of construction products and provider of services primarily for use on commercial construction, maintenance and restoration projects through several of its operating divisions, subsidiaries and other related companies. Tremco products and services are currently used in roofing, sealant, glazing, waterproofing, deck coating, concrete, masonry and construction product applications. In 1980, Tremco was acquired by the BFGoodrich Company. In 1997, Tremco was acquired by RPM, a public company incorporated in Delaware, with headquarters in Medina, Ohio. Tremco is a subsidiary of the RPM Building Solutions Group, Inc.

B. On June 27, 1996, Tremco entered into Multiple Award Schedule (MAS) Contract No. GS-07F-8798D with the U.S. General Services Administration (GSA), through which Federal agencies could purchase Tremco roofing products. Subsequent modifications of the contract in early 2001 allowed Federal agencies to purchase services combined with roofing products. On April 28, 2005, GSA entered into a second MAS contract with Tremco for facilities maintenance and management services, including alarm system services, pest control, grounds maintenance, machinery and equipment maintenance, building inspection, and other

services (No. GS-06F-47R). Contract Nos. GS-07F 8798D and GS-06F-47R are collectively referred to as the “GSA contracts.”

C. On July 15, 2010, Gregory Rudolph filed an action in the United States District Court for the District of Columbia captioned *United States, et al., ex rel. Gregory Rudolph v. Tremco Incorporated, et al.*, Civil Action No. 10-1192(JDB)(D.D.C.) pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator alleges that, with respect to the GSA contracts, Defendants violated the False Claims Act, 31 U.S.C. §§ 3729, et seq., by failing to provide Federal government purchasers with price discounts provided to private and other non-Federal government customers, as required by the contracts, thereby depriving the Government of the most favored pricing; marketing roofing materials to Federal government purchasers without disclosing the availability of lower-cost identical materials also manufactured and sold by Tremco; installing or causing to be installed roofing products and systems with known defects on Federal government buildings; over-specifying roofing materials for Federal government jobs beyond what was required to fulfill the government purchasers’ objectives, resulting in substantial overcharges for roofing materials; unnecessarily utilizing Tremco’s subsidiary, Weatherproofing Technologies, Inc. (WTI), as a general contractor and partnering with certain other subcontractors to inflate prices and lock-out competition; and selling defective roofing products, materials, and systems to the Federal government purchasers directly and, indirectly, through roofing contractors.

D. The United States contends that it has certain civil claims against RPM and Tremco arising during the period from January 2, 2002 through March 1, 2011. That conduct is referred to below as the “Covered Conduct.”

1. The United States contends that Tremco knowingly failed to provide GSA with current, accurate and complete pricing information concerning its roofing products and services during the negotiation of the GSA contracts and extensions and modifications thereof, and failed to comply with the price reduction clauses of the GSA contracts. As a result, the United States contends that Tremco knowingly submitted, or caused to be submitted, false claims for payment to the United States pursuant to the GSA contracts during the period from January 2, 2002 through March 1, 2011, and that the United States has incurred damages.

2. The United States also contends that Tremco knowingly marketed and sold certain roofing materials to government purchasers through the GSA contracts without disclosing the availability of lower-cost identical materials also manufactured and sold by Defendants.

3. The United States further contends that, through the GSA contracts, Tremco sold and installed (or caused to be installed) on government buildings, Burmastic Composite Ply roofing systems that did not satisfy relevant performance criteria on some projects due to an adhesive formula used for their application.

E. This Settlement Agreement is neither an admission of liability by RPM or Tremco nor a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. RPM and Tremco shall pay to the United States \$60,958,963 (Settlement Amount), plus simple interest of two percent (2%) on the Settlement Amount from May 15, 2013, until payment is made, by electronic funds transfer pursuant to written instructions to be provided by the United States no later than five (5) days after the Effective Date of this Agreement.
2. Conditioned upon the United States receiving the Settlement Amount, plus interest, from RPM and Tremco and as soon as feasible after receipt, the United States shall pay \$10,911,654 to Relator by electronic funds transfer, as the Relator's share of the Settlement Amount, plus simple interest of two percent (2%) from May 15, 2013, until the Settlement Amount payment is made, pursuant to 31 U.S.C. § 3730(d).
3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon RPM and Tremco's full payment of the Settlement Amount, plus interest, the United States releases RPM and Tremco, their present and former officers, directors, employees, and agents from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.
4. Subject to the exceptions in Paragraph 5 below, and conditioned upon RPM's or Tremco's full payment of the Settlement Amount, plus interest, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases RPM and Tremco from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in Paragraph 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability, including the suspension and debarment rights of any Federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for failure to deliver goods or services due;
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- h. Any liability of individuals (including current or former directors, officers, employees, agents, or shareholders of RPM or Tremco) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted or charged, or who enter into a plea agreement, related to the Covered Conduct; or
- i. Any claims under the warranty clauses of the GSA contracts.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and

assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Except as provided by the separate agreement referenced in Paragraph 13 below, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases RPM and Tremco, and their officers, directors, agents, attorneys, and employees, from any liability to Relator arising from the filing of the federal claims in the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

8. RPM and Tremco waive and shall not assert any defenses RPM or Tremco may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. RPM and Tremco fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that RPM or Tremco have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents,

employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of RPM or Tremco, and their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Tremco's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment RPM or Tremco makes to the United States pursuant to this Agreement and any payments that RPM or Tremco may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by RPM or Tremco, and RPM or Tremco shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Within 90 days of the Effective Date of this Agreement, RPM and Tremco shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by RPM and Tremco or any of their subsidiaries or affiliates from the United States. RPM and Tremco agree that the United States, at a minimum, shall be entitled to recoup from RPM or Tremco any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine RPM or Tremco's books and records and to disagree with any calculations submitted by RPM or Tremco or any of their subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by RPM or Tremco, or the effect of any such Unallowable Costs on the amount of such payments.

11. This Agreement is intended to be for the benefit of the Parties only.

12. Within five (5) days of payment described in Paragraph 2 above, the United States and Relator shall sign and file in the Civil Action a Joint Stipulated Order of Dismissal of the federal claims in the Civil Action pursuant to Rule 41(a)(1).

13. RPM and Tremco, and Rudolph, shall enter into a separate agreement with respect to the payment of Rudolph's attorney fees and costs. Other than Rudolph's attorney fees and costs, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Columbia. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties, except as provided in Paragraph 13. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on RPM's and Tremco's successors, transferees, heirs, and assigns.

20. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

21. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 8/13/13

BY: Arnold M. Auerhan
ARNOLD M. AUERHAN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

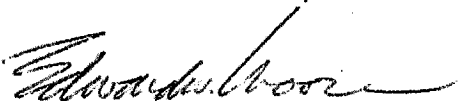
DATED: 8/13/13

BY: Ronald Machen Jr.
RONALD MACHEN JR.
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TREMCO INCORPORATED AND RPM INTERNATIONAL INC.

DATED: August 12, 2013

BY: _____


Edward W. Moore
Vice President, General Counsel, and
Chief Compliance Officer
RPM International Inc.

DATED: _____

BY: _____

Michael J. Drumm
Vice President, Chief Financial Officer, and
Treasurer
Tremco Incorporated

DATED: _____

BY: _____

Marcia G. Madsen
Lori E. Lightfoot
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Counsel for RPM and Tremco


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Counsel for RPM and Tremco

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DATED: _____

BY: _____

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RPM International Inc.

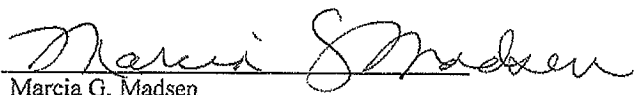
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BY: _____

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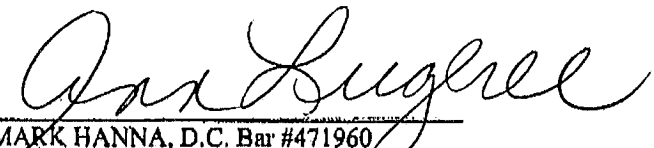
Counsel for RPM and Tremco

RELATOR

DATED: 8/10/2013

BY: 
GREGORY RUDOLPH

DATED: Aug 12, 2013

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