



90-11-2-140

U. S. Department of Justice

No. 0000167



34757

Washington, DC 20530

December 13, 1990

By Overnight Mail

Clerk of the Court
United States District Court
for the Western District of Michigan
410 West Michigan
Kalamazoo, Michigan 49005

United States, et al. v. Thomas Solvent Co., et al.
Civil Action Nos. K86-167 CA8 & K86-164 CA8
Hon. Richard Enslen

Dear Sir/Madam:

Enclosed for filing in these civil actions is the original and two copies of a Notice of Lodging of Partial Consent Decree and Judgment, with proof of service, and the proposed Partial Consent Decree and Judgment itself.

Thank you for your attention to this matter. If you have any questions or problems, please call (202 or FTS 368-4620).

Sincerely,

Assistant Attorney General
Environment & Natural Resources
Division

By: *T. A. Mariani, Jr.*

Thomas A. Mariani, Jr.
Environmental Enforcement Section

Enclosure
cc (w/ enc.):
R. Grimes
M. Cintron
J. Mann
R. Reichel

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO. K86-167 CAS
)	
v.)	HONORABLE RICHARD A. ENSLEN
)	
THOMAS SOLVENT COMPANY,)	
et al.,)	
Defendants.)	
<hr/>		
FRANK J. KELLEY, Attorney)	
General of the State)	CIVIL ACTION NO. K86-164 CAS
of Michigan; and the)	
STATE OF MICHIGAN,)	HONORABLE RICHARD A. ENSLEN
)	
Plaintiffs,)	
)	
v.)	
)	
THOMAS SOLVENT COMPANY,)	
et al.,)	
Defendants.)	

NOTICE OF LODGING OF PARTIAL CONSENT DECREE AND JUDGMENT

Plaintiffs, the United States of America and the State of Michigan, are hereby lodging with the Court a proposed Partial Consent Decree and Judgment, which, if entered by the Court,

would resolve certain of plaintiffs' claims against the Thomas Solvent companies and the Thomas family members named as parties defendant.

The proposed Partial Consent Decree and Judgment also would resolve certain of the cross-claims currently pending among the defendants and also would eliminate the need for trial on all matters previously scheduled for trial in these consolidated actions, as well as several matters that would have been reserved, through court-ordered bifurcation, for later phases of trial.

The proposed Partial Consent Decree and Judgment has been executed on behalf all parties to these consolidated civil actions: the United States, the State of Michigan, defendant Grand Trunk Western Railroad Company, and all the Thomas Solvent and Thomas family defendants, namely -- Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc; Thomas Solvent Inc. of Indiana; TSC Transportation Company; Richard E. Thomas, Carol Thomas, Steven Thomas, Gregg Thomas, Todd Thomas, and Letha Thomas.

Plaintiffs request that the Court not enter the proposed Partial Consent Decree and Judgment at this time. Rather, notice of the lodging of the proposed Partial Consent Decree and Judgment will be published in the Federal Register, following which the United States Department of Justice will receive public comments on the proposed Partial Consent Decree and Judgment for

a period of thirty days. At the conclusion of the comment period, the United States will file with the Court any comments received, as well as responses to the comments, and at that time, if appropriate, plaintiffs will request the Court to enter the Decree.

Date: December 12, 1990

Respectfully submitted,

FOR PLAINTIFF,
THE STATE OF MICHIGAN

FOR PLAINTIFF, THE UNITED STATES
OF AMERICA

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Attorney General of the
State of Michigan

RICHARD B. STEWART
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United States Department of Justice
Washington, D.C. 20530
(202) 514-5403

** Signed by T.A. Mariani, Jr., w/
authority from Mr. Reichel.*

OF COUNSEL:
ROGER GRIMES
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region V
Chicago, Illinois 60604

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing Notice of Lodging of Partial Consent Decree and Judgment were served by first class mail postage prepaid on December 12, 1990 on:

JAMES M. SULLIVAN, Esquire
Sullivan, Hamilton & Schulz
Tenth Floor Commerica Building
25 West Michigan Mall
Battle Creek, Michigan 49017

CHARLES B. BARBIERI, Esquire
Foster, Swift, Collins & Smith, P.C.
Foster Building
313 South Washington Square
Lansing, Michigan 48933

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Bodman, Longley & Dahling
34th Floor
100 Renaissance Center
Detroit, Michigan 48243



Thomas A. Mariani, Jr.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,)	Civil No. K86-167 CA8
Plaintiff,)	
v.)	
THOMAS SOLVENT COMPANY, <u>et al.</u>)	Hon. Richard A. Enslin
Defendants.)	
-----)	
FRANK J. KELLEY, Attorney)	
General of the State of)	
Michigan, and THE STATE OF MICHIGAN,)	
Plaintiffs,)	
v.)	
THOMAS SOLVENT COMPANY, <u>et al.</u>)	Civil No. K86-164 CA8

PARTIAL CONSENT DECREE AND JUDGMENT

WHEREAS Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in K86-167 CA8 on May 28, 1986, asserting, among other things, that the Defendants are jointly and severally liable to the United States, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for response costs incurred by the United States in responding to the release or threat of release of hazardous substances at three

locations in the vicinity of the Verona Well Field in Battle Creek, Michigan (the Annex, the Marshalling Yard, and the Verona Well Field), and that defendants other than Grand Trunk Western Railroad Company ("Grand Trunk") are jointly and severally liable to the United States for response costs incurred by the United States at a fourth site, the Raymond Road Facility. These four locations are collectively referred to herein as the "Verona Sites" and are described further below. The United States asserted that defendants Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; TSC Transportation Company; and Richard E. Thomas (the "Thomas Defendants") are jointly and severally liable for response costs incurred at three of the four Verona Sites: the Raymond Road Facility, the Annex, and the Verona Well Field. The United States also sought a declaration of the Thomas Defendants' liability for any further response costs which the United States may incur at the Raymond Road Facility, the Annex and the Verona Well Field. The United States also asserted claims against Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company (the "Thomas Spin-Off Defendants") under the Michigan Fraudulent Conveyances Act and principles of successor liability.

WHEREAS Plaintiffs, Frank J. Kelley, Attorney General of Michigan, and the State of Michigan (collectively "the State"),

filed a Complaint in K86-164 CA8 on May 27, 1986, asserting, among other things, that the Defendants are jointly and severally liable to the State of Michigan pursuant to the provisions of CERCLA for costs incurred by the State of Michigan in responding to the release or threat of release of hazardous substances at the Marshalling Yard, the Annex and the Verona Well Field, and that the Thomas Defendants are jointly and severally liable to the State of Michigan for the response costs incurred by the State of Michigan at the Raymond Road Facility. The State also sought a declaration of the Thomas Defendants' liability for any further response costs which the State incurs at the Raymond Road Facility, the Annex and the Verona Well Field. The State also asserted claims against Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company (the "Thomas Spin-Off Defendants") under the Michigan Fraudulent Conveyances Act and principles of successor liability.

WHEREAS on September 8, 1989 and September 12, 1989, the United States and the State filed a Supplemental Complaint and on September 8, 1989, Grand Trunk filed a third party complaint in which they all asserted claims against Carol Thomas, Steven Thomas, Todd Thomas and Gregg Thomas (the "Thomas Family Defendants") as recipients of the proceeds of fraudulently conveyed assets.

WHEREAS pursuant to order of this Court, the Thomas Defendants and Thomas Family Defendants have provided disclosures

of conveyances of assets from the Thomas Defendants to the Thomas Family Defendants.

WHEREAS on June 5, 1989, the Court entered a Partial Consent Decree, resolving certain claims of the United States and the State against Grand Trunk (the "Grand Trunk Decree"), which decree reserved the claims of the United States and the State against the Thomas Defendants and which decree barred the Thomas Defendants' claims against Grand Trunk for CERCLA contribution with regard to certain response costs covered by the Grand Trunk Decree.

WHEREAS Grand Trunk has asserted cross claims against the Thomas Defendants for contribution and indemnification, for property damage, breach of contract, negligence and for recovery of response costs, and has also asserted claims under the Michigan Fraudulent Conveyances Act and principles of successor liability. Grand Trunk has also asserted a third-party claim against Letha D. Thomas, the Richard E. Thomas Living Trust, and Richard E. Thomas as Trustee of the Richard E. Thomas Living Trust for contribution under CERCLA and indemnity, for recovery of response costs under CERCLA, and under other legal theories.

WHEREAS the Thomas Defendants have asserted cross-claims against Grand Trunk for contribution and response costs under CERCLA.

WHEREAS on December 2 and 13, 1988, the Court granted the motions of the United States, the State and Grand Trunk for summary judgment on their fraudulent conveyance and successor

liability claims. The Court held that the Thomas Spin-Off Defendants would have the same liability under Section 107 of CERCLA as Thomas Solvent Company. By subsequent orders dated January 4, 1989 and January 12, 1989 and August 9, 1989, the Court enjoined the Thomas Defendants from certain specified conveyances of assets and required the periodic submission of financial reports.

WHEREAS on December 13, 1989, the Court granted in part the motions of the United States and the State for partial summary judgment on their claims against Thomas Solvent Company and Thomas Development Inc. and found those corporations to be jointly and severally liable for response costs or damages associated with the Raymond Road Facility (Thomas Solvent Co.; Thomas Development, Inc.), the Annex (Thomas Solvent Co.) and the Verona Well Field (Thomas Solvent Co.; Thomas Development, Inc.). The Court denied plaintiffs' motion for partial summary judgment as to Richard E. Thomas, reserving the issue of the liability of Mr. Thomas for determination at trial.

WHEREAS in March 1989, the Court entered a Final Pretrial Order and thereafter this matter was scheduled for trial.

WHEREAS on September 21, 1990, the Court granted in part and denied in part the cross-motions of Grand Trunk and the Thomas Defendants, ruling that (1) the claims for contribution against Grand Trunk were barred for the period covered by the Grand Trunk Decree; (2) Grand Trunk has a contribution claim for sums paid pursuant to the Grand Trunk Decree; and (3) Grand Trunk and the

Thomas Defendants have a right to seek recovery of their response costs, subject to further proofs.

WHEREAS Grand Trunk and the Thomas Defendants have filed motions for rehearing of the September 21, 1990 ruling.

WHEREAS on September 24, 1990 the Court granted the Motion of the United States for a Ruling as to the Appropriate Standard and Scope of Review of Agency Action and also granted the Motion of the United States for Partial Summary Judgment for Costs and entered summary judgment finding Thomas Solvent Company liable for costs in the amount of \$877,704.78, the full amount sought by such motion.

WHEREAS this Partial Consent Decree and Judgment ("Decree") is made and entered into among all the parties to this action including the United States of America; Frank J. Kelley, Attorney General of Michigan, and the State of Michigan; Grand Trunk Western Railroad Company; Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; TSC Transportation Company; Richard E. Thomas; Carol Thomas; Steven Thomas; Todd Thomas; Gregg Thomas; Letha D. Thomas; the Richard E. Thomas Living Trust; and Richard E. Thomas as Trustee of the Richard E. Thomas Living Trust.

WHEREAS settlement of this action is in the public interest, the parties have entered into this Decree in good faith to avoid further expensive and protracted litigation and to resolve, without need for further litigation, certain of the claims, cross

claims and third-party claims raised in this action by the United States, the State of Michigan, the Thomas Defendants and Grand Trunk.

WHEREAS federal and state response activities with respect to the Verona Sites are continuing, and it is the purpose of this Decree to resolve the Thomas Defendants' liability for certain costs incurred to date.

WHEREAS Richard E. Thomas has provided the United States, the State and Grand Trunk with full and complete disclosure as to his financial resources, and the remaining Thomas Defendants and the Richard E. Thomas Living Trust have made full and complete disclosure of their current financial affairs pursuant to the orders of this Court dated January 4 and 12, 1989 and August 9, 1989, on which disclosures the United States, the State and Grand Trunk have substantially relied in entering into this Decree.

WHEREAS Thomas Solvent Company and Richard E. Thomas, among others, have entered into a Partial Contract Rescission Agreement with United States Fidelity and Guaranty Company ("USF&G"), pursuant to which USF&G will make payments totalling \$3,935,000 on behalf of Thomas Solvent Company in exchange for the agreement by Thomas Solvent Company, Richard E. Thomas and other parties to the partial rescission of certain policies of liability insurance issued to Thomas Solvent Company and other insureds by USF&G ("USF&G-TSC Partial Contract Rescission Agreement"). Such Agreement is conditioned on Thomas Solvent Company's obtaining covenants from the United States, the State and Grand Trunk not

to pursue any claims against USF&G with respect to the coverages being rescinded.

NOW, THEREFORE, before the taking of any testimony, and with the consent of the parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action and over the parties to this Decree, pursuant to 28 U.S.C. § 1331 and § 1345, and CERCLA Sections 107(a), and 113(b), 42 U.S.C. § 9607(a) and § 9613(b). The parties agree to be bound by the terms of this Decree and not to contest its validity in any subsequent proceeding arising from it.

B. Venue is proper in this Court pursuant to 42 U.S.C. § 9613(b) and under 28 U.S.C. §§ 1391(b) and (c).

II. AUTHORITY

The undersigned representative of each corporate party certifies that he or she is fully authorized to enter into this Consent Decree and to execute and to legally bind such party to this document.

III. DEFINITIONS

The following definitions shall apply in this Consent Decree:

A. "Verona Sites" for purposes of this Decree is a collective reference to the following locations:

1. The "Marshalling Yard," comprised of property owned and operated by Grand Trunk located generally to the east

of the Verona Well Field and used by Grand Trunk as a Marshalling Yard for its railroad business, for rail car maintenance and repair and for other purposes. The Marshalling Yard is located primarily in the Southwest quadrant of Section 33, Township 1 South, Range 7 West, Calhoun County, Michigan.

2. The "Annex," comprised of property owned by Grand Trunk located generally adjacent to and south of Emmett Street and to the west of Raymond Road in Battle Creek, Michigan, part of which was leased to and operated by Thomas Solvent Company and part of which is an adjacent easement and loading dock that was not leased to Thomas Solvent Company but was operated by that company. The Annex property is located in the Northeast quadrant of Section 5, Township 2 South, Range 7 West in Calhoun County, Michigan.

3. The "Verona Well Field," comprised of property owned and operated by the City of Battle Creek, Michigan, located on both sides of the Battle Creek River and used by the City primarily for the purpose of a well field for supplying water for domestic and industrial purposes in Battle Creek. The Verona Well Field is located in Section 32 and Section 33, Township 1 South, Range 7 West, Calhoun County, Michigan.

4. The Thomas Solvent Company's "Raymond Road Facility" is comprised of property commonly known as 1180 North Raymond Road, Battle Creek, Michigan, and used by the Thomas Solvent Company as its primary place of business in Battle Creek.

Neither the United States nor the State has alleged that Grand Trunk has liability for the Raymond Road Facility.

B. "Response Costs" shall have the meaning ascribed to that term in 42 U.S.C. § 9607(a).

C. "Federal Response Costs" are all Response Costs incurred by the United States with respect to the Verona Sites as of August 31, 1989, including pre-judgment interest on such costs through December 31, 1989.

D. "State Response Costs" are all Response Costs incurred by the State of Michigan with respect to the Verona Sites through November 30, 1989, with interest thereon, including all costs of litigation incurred by the State of Michigan in connection with these matters through November 30, 1989, as described in the Attachment hereto.

E. "Hazardous substance," "facility" and "release" are intended to have the meanings defined in Section 101 of CERCLA, 42 U.S.C. § 9601.

F. "Grand Trunk" means Grand Trunk Western Railroad Company.

G. "Grand Trunk Entities" means Grand Trunk Western Railroad Company, Grand Trunk Corporation, Canadian National Railway Company, their officers, directors, agents, servants, employees and successors.

H. "Thomas Defendants" means Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent

Inc. of Indiana; TSC Transportation Company; and Richard E. Thomas.

I. "Thomas Family Defendants" means Carol Thomas, Steven Thomas, Gregg Thomas and Todd Thomas.

J. "Coverage Action" means the civil action known as Thomas Solvent Company et al. v. Auto-Owners Insurance Company, et al. No. 90-2779, which is pending in the State of Michigan Circuit Court for the County of Calhoun.

K. "Final resolution of the Coverage Action" for purposes of this Decree means the last day on which any party in that action could have sought timely appellate review of the trial court's ruling on whether the insurance carriers in that action owe any of the Thomas Defendants a duty of indemnity for CERCLA response costs, unless one of those parties timely seeks appeal. If any party to the Coverage Action timely exercises its right to seek appellate review of that trial court ruling, then "final resolution of the Coverage Action" shall mean the date of final disposition of such appeal; provided that, any further trial court proceedings following appellate review shall be deemed a continuation of the Coverage Action.

L. "Third-party Defendants" means Letha D. Thomas, the Richard E. Thomas Living Trust and Richard E. Thomas as trustee of the Richard E. Thomas Living Trust.

M. "Federal Gap Response Costs" means Federal Response Costs, excluding 1) costs within the scope of the covenant not to sue granted by the United States to Grand Trunk in the June 5,

1989 Partial Consent Decree and pre-judgment interest on such costs through December 31, 1989 and 2) costs incurred by the United States in connection with the prosecution of this action subsequent to June 5, 1989 and prior to August 31, 1989, and 3) costs incurred by the United States at the Raymond Road Facility prior to August 31, 1990. "State Gap Response Costs" means State Response Costs, excluding 1) costs within the scope of the covenant not to sue granted by the State to Grand Trunk in the June 5, 1989 Partial Consent Decree and pre-judgment interest on such costs through December 31, 1989 and 2) costs incurred by the State in connection with the prosecution of this action subsequent to June 5, 1989 and prior to November 30, 1989, and 3) costs incurred by the State at the Raymond Road Facility prior to November 30, 1989. "Gap Response Costs" means Federal Gap Response Costs and State Gap Response Costs.

N. "Grand Trunk Response Costs" means all Response Costs incurred by Grand Trunk with respect to the Verona Sites through January 23, 1990.

O. "Thomas Defendants' Response Costs" means all Response Costs incurred by the Thomas Defendants with respect to the Verona Sites through March 1, 1990.

P. "USF&G" means United States Fidelity and Guaranty Company.

Q. The "USF&G-TSC Partial Contract Rescission Agreement" means the agreement entered into by USF&G on October 19, 1990 and Thomas Solvent Company, Richard E. Thomas and Letha Thomas on

October 22, 1990, which provides among other things for the partial rescission of USF&G insurance coverages and the payment of \$3,935,000 by USF&G to certain parties.

R. "Legal rate" shall mean the interest rate established by 28 U.S.C. §1961. As of September 20, 1990, such rate was 7.78%.

IV. ENTRY OF JUDGMENT FOR AND REIMBURSEMENT OF FEDERAL AND STATE RESPONSE COSTS

A. Judgment is hereby entered in favor of the United States on the United States' claim for Federal Response Costs in the amount of \$9,772,640 plus interest calculated at the legal rate, from March 1, 1990 to the date of entry of this Decree, against the following parties, jointly and severally: Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company. Interest shall continue to accrue on such judgment following entry of this Decree at the legal rate, until such judgment is satisfied or discharged in full.

B. Judgment is hereby entered in favor of the State on the State's claim for State Response Costs in the amount of \$2,102,260, plus interest calculated at the legal rate, from March 1, 1990 to the date of entry of this Decree, against the following parties, jointly and severally: Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company. Interest shall

continue to accrue on such judgment following entry of this Decree at the legal rate, until such judgment is satisfied or discharged in full.

C. Judgment is hereby entered in favor of the United States on the United States' claim for Federal Response Costs in the amount of \$2,000,000 against Richard E. Thomas. The liability under the judgment imposed by this paragraph is part of and joint and several with the liability under the judgment imposed by Paragraph IV.A, such that any payments on the judgment provided for in this paragraph shall reduce by the same amount the judgment provided for in Paragraph IV.A. Interest shall accrue on such judgment following entry of this Decree at the legal rate, until such judgment is satisfied or discharged in full.

D. Judgment is hereby entered in favor of the State on the State's claim for State Response Costs in the amount of \$500,000 against Richard E. Thomas. The liability under the judgment imposed by this paragraph is part of and joint and several with the liability under the judgment imposed by Paragraph IV.B, such that any payments on the judgment provided for in this paragraph shall reduce by the same amount the judgment provided for in Paragraph IV.B. Interest shall accrue on such judgment following entry of this Decree at the legal rate, until such judgment is satisfied or discharged in full.

E. Judgment is hereby entered in favor of the State on the State's claim for natural resource damages in the amount of \$200,000 against Richard E. Thomas. In the event that payment is

not timely made pursuant to Paragraph VII.C, interest shall accrue on such judgment following entry of this Decree at the legal rate until such judgment is satisfied or discharged in full.

F. In complete satisfaction of their obligations under this Decree, except as provided for by Paragraph X.E of this Decree, Carol Thomas, Todd Thomas, Gregg Thomas, and Steven Thomas shall pay to the United States the aggregate sum of \$8,200 within 30 days after entry of this Decree. This sum will be applied in partial satisfaction of the judgement referenced in Paragraph IV.A.

G. In complete satisfaction of their obligations under this Decree, except as provided for by Paragraph X.E of the Decree, Carol Thomas, Todd Thomas, Gregg Thomas and Steven Thomas shall pay to the State the aggregate sum of \$1,800 within 30 days after entry of this Decree. This sum will be applied in partial satisfaction of the judgment referenced in Paragraph IV.B.

H. Payment made pursuant to Paragraph IV.F above and all other payments on the judgments referenced in Paragraph IV.A and IV.C shall be made by certified or cashier's check payable to the "EPA Hazardous Substance Superfund" and shall be delivered to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. The check or transmittal letter shall refer to "Verona Well Field Michigan Site," United States v. Thomas Solvent Company, et al, No. 86-167 (W.D. Mich.) (D.J. No. 90-11-2-140). A copy of the payment check and transmittal letter shall be sent

to each of the following: Waste Management Division, Technical Support Section, Responsible Party -- Cost Recovery Unit (5HR-11), Financial Accounting Section (5MF-14), and Office of Regional Counsel (5CS-16), all at the following address:

United States Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604.

Such copies shall also be provided to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington D.C. 20530, Ref. No. 90-11-2-140. Payment shall be deemed accomplished upon receipt by EPA of the check.

I. Payment made pursuant to Paragraph IV.G above and all payments on the judgments referenced in Paragraphs IV.B, IV.D and IV.E above shall be made by certified or cashier's check payable to "The State of Michigan" and shall be sent to:

Assistant Attorney General In Charge
Environmental Protection Division
P.O. Box 30212
Lansing, Michigan 48903

Payment to the State of Michigan shall be deemed accomplished upon receipt by the State of the check. The check or transmittal letter shall refer to Frank J. Kelley, et al. v. Thomas Solvent Company, et al., No. 86-164 (W.D. Mich.).

V. JUDGMENT IN FAVOR OF GRAND TRUNK

A. Judgment is hereby entered in the amount of \$2,900,000 in favor of Grand Trunk against the following parties, jointly and severally: Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company

of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company on all of Grand Trunk's claims for 1) contribution with respect to the sums paid by Grand Trunk pursuant to the Grand Trunk Decree, 2) Grand Trunk's Response Costs, and 3) claims under the Michigan Fraudulent Conveyance Act and principles of successor liability. Further, liability is admitted by the foregoing defendants to Grand Trunk on Grand Trunk's claims for negligence related to releases of hazardous substances at the Raymond Road Facility which have contaminated the soil and groundwater of downgradient properties, and at the Annex which have contaminated the soil and the groundwater at the Annex and at downgradient properties. Grand Trunk's claims for breach of contract, indemnity, trespass and nuisance are reserved for determination at the Phase II trial. Grand Trunk's damages on its negligence claim and its liability claims for breach of contract, indemnity, trespass and nuisance shall be determined during the Phase II trial, at which time defendants may attempt to prove that the judgment pursuant to this paragraph satisfies part or all of those claims, but in no event shall the foregoing defendants have any further liability for sums paid by Grand Trunk pursuant to the Grand Trunk Decree and for Grand Trunk Response Costs under those theories.

B. Judgment is hereby entered in the amount of \$1,000,000 in favor of Grand Trunk against Richard E. Thomas on all of Grand Trunk's claims for contribution, negligence, and recovery of response costs as well as claims under the Michigan Fraudulent

Conveyance Act and principles of successor liability. Grand Trunk's remaining claims against Richard E. Thomas are dismissed with prejudice. The liability under the judgment imposed by this paragraph is part of and joint and several with the liability under the judgment imposed by Paragraph V.A, such that any payments on the judgment provided for in this paragraph shall reduce by the same amount the judgment provided for in Paragraph V.A.

C.. Judgment is entered in favor of Grand Trunk and against the Thomas Defendants, the Third Party Defendants and the Thomas Family Defendants on all claims asserted or which could have been asserted by these parties against Grand Trunk related to Federal Response Costs, State Response Costs, Thomas Defendants' response costs and contribution, which now exist or may arise in the future, or claims of those plaintiffs as of November 13, 1990 in any of the three civil actions referenced below in Paragraph VII.E.5, and these parties agree to release the Grand Trunk Entities as to all such claims; except the Thomas Defendants (except Richard E. Thomas) retain and reserve (1) a claim for contribution against Grand Trunk and the Grand Trunk Entities (except the Grand Trunk Entities' officers, directors, agents, servants and employees) for Federal Gap Response Costs, State Gap Response Costs or other liabilities as to which they and Grand Trunk may be jointly and severally liable to the United States and the State that are satisfied by the Thomas Defendants (except Richard Thomas) and (2) a claim against Grand Trunk and

the Grand Trunk Entities (except the Grand Trunk Entities' officers, directors, agents, servants and employees) for any response costs incurred by the Thomas Defendants (except Richard Thomas) after March 1, 1990 that are consistent with the National Contingency Plan.

D. The judgments referred to in Paragraphs V.A and V.B shall be subordinate to the judgments in favor of the United States and the State referenced in Paragraphs IV.A, IV.B, IV.C IV.D. and IV.E but shall not thereby be subordinated to claims of any other person. The Thomas Defendants shall make no voluntary payments to Grand Trunk on the judgment referenced in Paragraph V.A until the judgments of the United States and the State have been satisfied in full. In addition, to the extent that Grand Trunk receives any payments on the judgment set forth in Paragraph V.B at a time when the claims of the United States and the State against the Thomas Defendants arising from the Verona Sites have not been satisfied in full, Grand Trunk shall remit, within 30 days of receipt, 82% of all sums received to the United States and 18% to the State.

E. Letha Thomas shall pay or cause to be paid to Grand Trunk the sum of \$100,000 within 30 days after entry of this Decree. In the event that the Thomas Defendants and Letha Thomas are unable to cause the payment of the sum set forth in Paragraph VII.D and if such failure is caused by events totally beyond the control of the Thomas Defendants and Letha Thomas, including the issuance of an order by a court of competent jurisdiction

preventing the use of the funds obtained from USF&G pursuant to the USF&G TSC Partial Contract Rescission Agreement as required by this Decree, then Letha Thomas's obligation to pay Grand Trunk shall be reduced to \$50,000. Upon the payment required by this Paragraph, Grand Trunk waives and discharges any and all claims against Letha Thomas and the third-party action by Grand Trunk against her shall be dismissed with prejudice and the injunctive orders of January 4, 1990 and January 12, 1990 shall no longer be effective as to Letha Thomas. Failure to make the required payment within the time specified shall cause judgment to enter in favor of Grand Trunk and against Letha Thomas in the required amount, which judgment shall bear interest at the legal rate until the judgment is satisfied. Failure to make said payment within the time specified may be established by affidavit of Grand Trunk's counsel of record in this case. Upon presentation of such affidavit, judgment shall be entered by the clerk of this Court without further proceedings. Grand Trunk may execute against the assets of Letha Thomas to satisfy that judgment immediately upon its entry. This sum will be applied in partial satisfaction of the judgment entered pursuant to Section V.A.

F. Upon the dismissal of the claims of the United States and the State pursuant to Paragraph X.E, Grand Trunk waives and discharges any and all claims against Carol Thomas, Steven Thomas, Gregg Thomas and Todd Thomas by Grand Trunk, reserving and without prejudice to any claims arising out of conveyance to them from any of the Thomas Defendants and the Richard E. Thomas

Living Trust after January 23, 1990, or prior to January 23, 1990 to the extent such conveyances have not been previously disclosed to Grand Trunk. This waiver and discharge shall not limit or affect the ability of Grand Trunk to seek execution on its judgment against Richard E. Thomas or assert any claims with respect to any real or personal property owned jointly by Richard E. Thomas and his wife and/or children or the proceeds thereof, subject to the terms of Section VIII.

G. Grand Trunk waives and discharges any and all claims against the Richard E. Thomas Living Trust and Richard E. Thomas as trustee of the Richard E. Thomas Living Trust by Grand Trunk through January 23, 1990, reserving and without prejudice to any claims arising out of conveyances to them from any of the Thomas Defendants after January 23, 1990, or prior to January 23, 1990 to the extent such conveyance have not been previously disclosed to Grand Trunk. This waiver and discharge shall not limit or affect the ability of Grand Trunk to seek execution on its judgment against Richard E. Thomas or assert any claims with respect to any real or personal property owned jointly by Richard E. Thomas and his wife and/or children or the proceeds thereof, subject to the terms of Section VIII.

H. The judgment in Paragraph V.A does not apply to or satisfy Grand Trunk's future contribution claims arising out of any payments it may make in the future to the United States or the State 1) for Gap Response Costs or 2) for any other liabilities to the United States or the State not resolved by the

Grand Trunk Decree; nor shall the entry of judgment against the Thomas Defendants (except Richard E. Thomas) and in favor of the United States and the State in this Decree bar Grand Trunk's future contribution claims against the Thomas Defendants (except Richard E. Thomas) for Gap Response Costs. However, if the Thomas Defendants (except Richard E. Thomas) satisfy in full the Judgments granted the United States and the State by this Decree, then the contribution claims of Grand Trunk for Gap Response Costs are discharged. If the respective contribution claims between the Thomas Defendants (except Richard E. Thomas) and Grand Trunk are judicially determined at a time 1) before the Thomas Defendants (except Richard E. Thomas) have fully satisfied the judgment pursuant to Paragraphs IV.A and IV.B, and 2) after Grand Trunk has paid more than its judicially determined share of Gap Response Costs, then Grand Trunk shall be entitled to a judgment in contribution against the Thomas Defendants (except Richard E. Thomas) in the amount by which Grand Trunk's payment for Gap Response Costs exceeds its judicially apportioned share of same. In the event that Grand Trunk receives any payments from persons not a party to this suit in satisfaction of their liability to Grand Trunk for Gap Response Costs, the Thomas Defendants (except Richard E. Thomas) may attempt to prove that part or all of such payments satisfy part or all of the Thomas Defendants' contribution liability to Grand Trunk for Gap Response Costs.

VI. LIQUIDATION OF SPIN-OFFS

A. Following lodging of this Decree, Richard F. Thomas; Thomas Development; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company agree to use, and shall use, their best efforts to liquidate the assets of Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company so as to realize the greatest return reasonably feasible as soon as reasonably feasible. Any proceeds of such liquidation realized prior to entry of this Decree shall be placed into an interest-bearing escrow fund to be established by the Thomas Defendants within 10 days following the lodging of this Decree. This escrow fund shall be referred to as the Liquidation Escrow Fund.

B. Prior to entry of this Decree, the Thomas Defendants may use the Liquidation Escrow Fund for the following purposes:

(1) reasonable and necessary expenses of completing the liquidation of the remaining assets of the Spinoff Companies and of maintaining the Liquidation Escrow Fund, subject to the following limitations:

a. No more than \$20,000 may be spent for such purposes through the period ending February 28, 1991, without prior approval of at least two of the following: the United States, the State and Grand Trunk.

b. No more than \$10,000 of the amount specified in subparagraph VI.B.(1)a. may be paid, in total, to Richard E. Thomas or any Thomas Family Defendant.

(2) Subject to the limitations of subparagraph VI.B.(3), reasonable and necessary legal fees and expenses of the Thomas Defendants incurred in:

a. Litigating their interests as insureds in the Coverage Action or any successor to that action, and any other insurance action involving environmental contamination at sites owned or operated by one or more of the Thomas Defendants prior to 1986, where such Defendants are litigating whether insurance covers environmental causes of action asserted against the Defendants; provided, however, that such other insurance actions may be initiated only with the approval of two of the following: the United States, the State and Grand Trunk.

b. Defending actions involving (i) environmental contamination of other sites owned or operated by one or more of the Thomas Defendants prior to 1986; or (ii) product liability claims against the Thomas Defendants.

(3) No more than a total of \$250,000 or 45% of the total amount deposited in the Liquidation Escrow Fund, whichever is less, may be used by the Thomas Defendants for the purposes described in subparagraph VI.B.(2) without

prior approval of at least two of the following: the United States, the State and Grand Trunk.

C. Within 10 days after entry of this Decree, 82% of the Net Escrow Funds, if any, shall be paid to the United States and 18% of the Net Escrow Funds shall be paid to the State, in partial satisfaction of their respective judgments under Paragraphs IV.A and IV.B. Net Escrow Funds shall mean the total amount paid into the Liquidation Escrow Fund, less expenditures made in accordance with Paragraph VI.B of this Decree.

D. Any additional proceeds of the liquidation of Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company realized subsequent to the entry of this Decree shall be disbursed, within 30 days after such realization, as follows:

82% to the United States in partial satisfaction of its judgment under Paragraph IV.A.

18% to the State in partial satisfaction of its judgment under Paragraph IV.B.

E. The Thomas Defendants agree to use their best efforts to seek resolution of the Coverage Action as expeditiously as reasonably feasible.

F. All payments to the United States and the State under this Section shall be transmitted as set forth in Section IV.H and IV.I, respectively.

**VII. PAYMENTS FROM PROCEEDS OF THE
USF&G-TSC PARTIAL CONTRACT RESCISSION AGREEMENT**

The Thomas Defendants shall cause the following payments to be made from the proceeds of the USF&G-TSC Partial Contract Rescission Agreement, within 10 days after the entry of this Decree:

A. \$1,200,000 shall be paid to the United States in partial satisfaction of the judgment set forth in Paragraph IV.A.

B. \$300,000 shall be paid to the State in partial satisfaction of the judgment set forth in Paragraph IV.B.

C. \$200,000 shall be paid to the State in complete satisfaction of the judgment set forth in Paragraph IV.E.

D. \$50,000, but no more, shall be paid to Grand Trunk in partial satisfaction of the judgment set forth in Paragraph V.E. Within 30 days of the receipt of such payment by Grand Trunk, it shall remit the sum of \$41,000 to the United States and the sum of \$9,000 to the State.

E. \$2,185,000, the balance of the proceeds from the USF&G-TSC Partial Contract Rescission Agreement, shall be paid to a Receiver appointed by the Court and held in an account established by Order of the Court known hereafter as the Receivership Account. The United States and the State shall have liens on the assets held by the Receiver, including interest earned by the Receivership Account, for the satisfaction of judgments in their favor resulting from this Decree, which liens shall have priority over any other liens. The United States and the State may not execute their liens without first obtaining

approval of the Court. Notwithstanding these liens, the Receiver may use the proceeds of the Receivership Account, including interest earned by the Account, for the following purposes, consistent with the restrictions set out in the following paragraphs:

- (1) Reasonable costs of establishing and administering the Receivership Account.
- (2) Any share of defense costs previously borne by USF&G that must now be paid by the Thomas Defendants as a result of the USF&G-TSC Partial Contract Rescission Agreement, to the extent such defense costs are incurred on or after the date on which this Decree is entered.
- (3) Unless and until payments are permitted under Paragraph VII.E(4), reasonable and necessary legal fees and expenses of the Thomas Defendants incurred in litigating their interests as insureds in:
the Coverage Action, or any successor to that action, and any other insurance action involving environmental contamination at sites owned or operated by one or more of the Thomas Defendants prior to 1986, where such Defendants are litigating whether insurance covers environmental causes of action asserted against the Defendants; provided, however, that such other insurance actions may be initiated only with the approval of

two of the following: the United States, the State and Grand Trunk. Such approval shall not be unreasonably withheld.

(4) Reasonable and necessary legal fees and expenses incurred by any party to this Decree in litigating its interest in the Coverage Action, if the Thomas Defendants fail or cease to adequately prosecute that action, and if the use of the Receivership Account for such purpose is approved by two of the following: the United States, the State or Grand Trunk. This Court shall have jurisdiction over any disputes concerning the application of this paragraph.

(5) Reasonable settlement of claims made or satisfaction of judgments entered in following cases, each of which is now pending in the Circuit Court of the State Michigan, Calhoun County:

Allen, et al v. Thomas Solvent Co., et al,
Civ. No. 84-3331-NO,

Anthony, et al v. Thomas Solvent Company, et al, Civ. No. 88-660-NO, and

Ackins, et al v. Canadian National Railway Company, et al, Civ. No. 84-3081-NO.

(6) Reasonable and necessary legal fees and expenses of the Thomas Defendants incurred in defending actions involving (a) environmental contamination at other sites owned or operated by one or more of the Thomas

Defendants prior to 1986, (b) product liability claims against the Thomas Defendants. Subject to Subparagraph VII.G, not more than \$200,000 may be disbursed for these purposes without the written approval of at least two of the following: the United States, the State and Grand Trunk.

(7) Payments to the United States and the State of 82% and 18% respectively, of the total amount that was expended prior to the entry of this Decree, from the Liquidation Escrow Fund pursuant to Paragraph VI.B.2. of the Decree, plus interest at the legal rate from the date such expenditures were made from the Liquidation Escrow Fund, to the date of payment under this paragraph. In furtherance of this purpose, the Thomas Defendants shall, not later than 30 days after the entry of this Decree, transmit to the Receiver a written certification of the amounts paid from the Liquidation Escrow Fund pursuant to Paragraph VI.B.2, and the date of such payments. The Receiver shall make the payments required by this paragraph to the United States and the State within 30 days after receipt of such certification.

(8) Any other purpose proposed by the Thomas Defendants, if a request to use the Receivership Account for such purpose has been sent to the United

States, the State and Grand Trunk, and fewer than two of those parties has objected to such use within 30 days of receipt of such notice.

F. The Receiver shall provide the United States, the State, and Grand Trunk with reports on a monthly basis, setting forth the balance in the Receivership Account and listing all disbursements from the Account.

G. A total sum no greater than one-half of the monies placed in or generated by the Receivership Account may be disbursed in furtherance of the purposes described in Paragraphs VII.E (1) & (2) & (3), without the written approval of the United States and the State of Michigan, to exceed this limit. Such approval shall not be unreasonably withheld.

H. When all of the purposes for which the Receivership Account may be used have either been satisfied or otherwise no longer exist, the Receivership Account shall be terminated and any balance in such account shall be paid over as follows in partial satisfaction of the judgments under Paragraphs IV.A and IV.B: 82% to the United States and 18% to the State. If all claims and judgments of the United States and the State against the Thomas Defendants arising from the Verona Sites have been satisfied in full, any balance in the Receivership Account shall be paid to Grand Trunk in partial satisfaction of its judgments herein. If the claims and judgments of Grand Trunk against the Thomas Defendants arising from the Verona Sites have been

satisfied in full, any balance in such account shall be remitted to Thomas Solvent Company.

I. All payments to the United States and the State under this Section shall be transmitted as set forth in Paragraphs IV.H and IV.I, respectively.

J. The Receiver shall not be amenable to suit unless the approval of the Court is first obtained, except as otherwise as provided by law.

K. Any failure by the Thomas Defendants or Letha Thomas timely to make, or cause the making of, the payments required by Paragraphs A through E of this Section shall not be deemed a violation of this Decree if such failure is caused by events totally beyond the control of the Thomas Defendants or Letha Thomas, including the issuance of an order by a court of competent jurisdiction preventing the use of the funds obtained from USF&G pursuant to the USF&G-TSC Partial Contract Rescission Agreement as required by this Decree.

VIII. STAY OF EXECUTION ON JUDGMENT AGAINST
RICHARD E. THOMAS

A. The United States, the State, and Grand Trunk agree not to take any action to execute on their judgments against Richard E. Thomas pursuant to Paragraphs IV.C, IV.D, IV.E and V.B, respectively, until 45 days after the final resolution of the Coverage Action. Nothing in this paragraph shall be interpreted to affect in any way the rights of the United States, the State, and Grand Trunk -- whatever those rights may be under applicable law -- to take any action aimed at securing priority for their

judgments as against other creditors and claimants of Richard E. Thomas.

B. Until the final resolution of the Coverage Action, this Court's orders of January 4 and January 12, 1989 and August 9, 1989, shall remain in effect as to Richard E. Thomas, who shall comply with the limitations on transfers of assets and the reporting requirements set forth in those orders. Such orders shall also remain in effect as to all other parties subject thereto, except Letha Thomas, provided however that such orders shall not be construed to prevent the liquidations provided for in Section VI, and any reporting requirements for each of the corporations to be liquidated shall terminate once the liquidation of such corporation is complete.

C. The agreement not to execute set forth in Paragraph VIII.A shall terminate and be of no further effect if any of the following shall occur:

1. If in the course of any calendar year, any final judgment -- or combination of final judgments -- worth more than \$10,000 is entered against Richard E. Thomas in favor of any person other than the United States, the State or Grand Trunk pursuant to this Consent Decree and Richard E. Thomas has not obtained with respect to the judgment(s) a stay of execution or a binding written acknowledgement from an insurer that the losses are covered by a policy of insurance. Richard E. Thomas agrees to notify the United States,

the State and Grand Trunk within 3 business days following receipt of any notice of entry of any final judgment in any amount against Richard E. Thomas in favor of any person. For the purpose of this paragraph VII.C.1, "final judgment" shall mean a final judgment of a court denominated as such, any other final court order requiring the payment or expenditure of money, the allowance of any claim in any proceeding involving the estate of Richard E. Thomas (except for claims for taxes accruing in the year of death or taxes accruing on account of death), or any valid and legally enforceable lien imposed against the property of Richard E. Thomas, except for a lien given voluntarily by Richard E. Thomas for present and fair consideration received.

2. If Richard E. Thomas or Carol Thomas files a petition under the Bankruptcy Code or an involuntary petition against Richard E. Thomas or Carol Thomas is granted.

3. If Richard E. Thomas violates the orders referred to in Paragraph VIII.B, provided, however, that the agreement not to execute shall not terminate if the following conditions are both met: 1) Richard E. Thomas fully remedies any violation within 10 days of being notified of such violation and 2) the violation by Richard E. Thomas was not intentional or willful in any

manner. This Court shall have continuing jurisdiction to resolve any disputes concerning the application of this subparagraph, and in any adjudication arising from such dispute, Richard E. Thomas shall have the burden of demonstrating that his violation of the orders referred to in Paragraph VIII.B was not intentional or willful in any manner.

4. If any of the payments referenced in Paragraphs IV.F, IV.G, VI.A, VI.B, or VII.B or VII.C are not timely made, subject to the terms of Paragraph VII.K.

5. Upon the death of Richard E. Thomas, unless he has provided by the execution of appropriate testamentary documents that, i) the assets of his estate will, to the fullest extent permitted by law, be preserved pending the final resolution of the Coverage Action or any successor thereto or until satisfaction of the judgments imposed on Richard E. Thomas by this Decree, whichever occurs first; and ii) the Coverage Action or any successor thereto will be prosecuted by his personal representative through the final resolution of the Coverage Action or any successor thereto.

D. To the extent that the stay of execution provided for in this paragraph prevents the United States, the State or Grand Trunk from initiating any civil action or proceeding, any otherwise applicable statute of limitations with respect to such

action or proceeding shall be tolled during the pendency of such stay.

E. Upon complete satisfaction or discharge of all judgments established by this Decree, the United States, the State, and Grand Trunk agree not to take any action to execute on those judgments by levy, seizure, or otherwise against Richard E. Thomas personally.

IX. REDUCTION OF JUDGMENTS AGAINST RICHARD E. THOMAS

A. Upon receipt by the United States of any payments pursuant to Paragraphs VI.A or VI.B, or any payment of principal, but not interest, pursuant to Paragraph VII.E.(7), the judgment against Richard E. Thomas set forth in Paragraph IV.C shall be reduced by 50% of such payment. Upon receipt by the United States of any payment pursuant to Paragraph VII.A, the judgment against Richard E. Thomas set forth in Paragraph IV.C shall be reduced by 5% of such payment. Upon the receipt by the United States after entry of this Decree of any other payments from or on behalf of the Thomas Defendants other than Richard E. Thomas, and specifically excluding any payments received from Grand Trunk under Paragraph VII.D and any payments received pursuant to Paragraph VII.E(7), the judgment against Richard E. Thomas set forth in Paragraph IV.C shall be reduced by 10% of such payments. Notwithstanding any of the foregoing, the judgment against Richard E. Thomas set forth in paragraph IV.C shall not be reduced below the Federal Judgment Reduction Limit, as set forth below, until all response cost claims of the United States

against the Thomas Defendants, other than Richard E. Thomas, at the Verona Sites have been reduced below such amount, in which event the judgment against Richard E. Thomas set forth in Paragraph IV.C shall be equal to the outstanding cost recovery claims against the Thomas Defendants, other than Richard E. Thomas. The Federal Judgment Reduction Limit shall be \$165,000 plus interest on that amount from March 1, 1990, at the legal rate. Upon receipt by the United States, after entry of this Decree, of payments by Richard E. Thomas in satisfaction of the judgment established by Paragraph IV.C, that are not already mandated by this Decree under Sections VI or VII and also excluding any payments from the proceeds of any insurance policies and any payments received by the United States from Grand Trunk, such payments shall reduce both the judgment established by Paragraph IV.C and the Federal Judgment Reduction Limit by 100% of such payment.

B. Upon receipt by the State of any payments pursuant to Paragraphs VI.A or VI.B, or any payment of principal, but not interest, pursuant to Paragraph VII.E.(7), the judgment against Richard E. Thomas set forth in Paragraph IV.D shall be reduced by 50% of such payment. Upon receipt by the State of any payment pursuant to Paragraph VII.B, the judgment against Richard E. Thomas set forth in Paragraph IV.D shall be reduced by 5% of such payment. Upon receipt by the State of any payment pursuant to Paragraph VII.C, the judgment against Richard E. Thomas set forth in Paragraph IV.E shall be reduced by 100% of such payment. Upon

the receipt by the State after entry of this Decree of any other payments from or on behalf of the Thomas Defendants other than Richard E. Thomas, and specifically excluding any payments received from Grand Trunk under Paragraph VII.D and any payments received pursuant to Paragraph VII.E(7), the judgment against Richard E. Thomas set forth in paragraph IV.D shall be reduced by 10% of such payments. Notwithstanding any of the foregoing, the judgment against Richard E. Thomas set forth in Paragraph IV.D shall not be reduced below the State Judgment Reduction Limit, as set forth below, until all response cost claims of the State against the Thomas Defendants, other than Richard E. Thomas, at the Verona Sites have been reduced below such amount, in which event the judgment against Richard E. Thomas set forth in Paragraph IV.D shall be equal to the outstanding cost recovery claims against the Thomas Defendants other than Richard E. Thomas. The State Judgment Reduction Limit shall be \$40,000 plus interest on that amount from March 1, 1990 at the legal rate. Upon receipt by the State, after entry of this Decree, of payments by Richard E. Thomas in satisfaction of the judgment established by Paragraph IV.D, that are not already mandated by this Decree under Sections VI or VII and also excluding any payments from the proceeds of any insurance policies and any payments received by the State from Grand Trunk, such payments shall reduce both the judgment established by Paragraph IV.D and the State Judgment Reduction Limit by 100% of such payment.

C. Payments made to Grand Trunk after entry of this Decree, from or on behalf of the Thomas Defendants other than Richard E. Thomas or from or on behalf of Letha Thomas, shall not satisfy or partially satisfy the judgment in favor of Grand Trunk against Richard E. Thomas set forth in Paragraph V.B except as specified in this paragraph. After the aggregate judgment in favor of the United States and the State against Richard E. Thomas has been reduced to \$1,000,000 pursuant to the terms of Paragraphs IX.A and IX.B, the judgment set forth in Paragraph V.B in favor of Grand Trunk shall be reduced by an amount equal to the aggregate amount by which the judgments in favor of the United States and the State are further reduced as a result of the receipt of any payments from or on behalf of the Thomas Defendants other than Richard E. Thomas.

X. COVENANTS NOT TO SUE

A. In consideration of the entry of judgment referred to in Paragraph IV.A, the United States on behalf of EPA, covenants not to sue or take any other civil judicial or administrative action against Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; TSC Transportation Company, other than enforcing the judgments set forth herein, for the recovery of Federal Response Costs or for recovery of interest on Federal Response Costs. The United States expressly reserves, and this Decree shall be without prejudice to, any other claims that the United States may have,

including, without limitation, any claims against the Thomas Defendants under CERCLA for response costs not covered by this Decree. This covenant not to sue shall, without limitation, not include or in any way affect any of the following:

- 1) Claims of the United States for recovery of any response costs incurred after the August 31, 1989;
- 2) Claims of the United States for interest on the foregoing;
- 3) Claims of the United States for damages to natural resources;
- 4) Claims of the United States under Section 106 of CERCLA, 42 U.S.C. § 9606.

B. In consideration of the entry of judgment referred to in Paragraph IV.B, the State covenants not to sue or take any other civil judicial or administrative action against Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; TSC Transportation Company, other than enforcing the judgments set forth herein, for the recovery of State Response Costs or for recovery of interest on State Response Costs. The State expressly reserves, and this Decree shall be without prejudice to, any other claims that the State may have, including, without limitation, any claims against the Thomas Defendants under CERCLA for response costs not covered by this Decree. This covenant not to sue shall, without limitation, not include or in any way affect any of the following:

- 1) Claims of the State for recovery of any response costs incurred after November 30, 1989;
- 2) Claims of the State for interest on the foregoing;
- 3) Claims of the State for damages to natural resources;
- 4) Claims of the State for injunctive relief under applicable law.

C. In consideration of the entry of judgment referred to in Paragraph IV.C, and upon the receipt by the United States of timely payment in accordance with Paragraph VII.A, the United States on behalf of EPA, covenants not to sue or take any other civil judicial or administrative action against Richard E. Thomas, other than enforcing the judgments set forth herein, for the recovery of Response Costs incurred at the Verona Sites arising from Richard E. Thomas' status as an owner or operator of the Annex and the Raymond Road Facility. This covenant not to sue shall, without limitation, not include or in any way affect any of the following:

- 1) Claims of the United States relating to any criminal liability;
- 2) Claims of the United States based on Richard E. Thomas' failing to comply with the requirements of this consent decree;
- 3) Claims of the United States for damages to natural resources.

However, notwithstanding any other provision of this Consent Decree, the United States reserves the right to institute proceedings in this action or a new action or to issue an Order seeking to compel Richard E. Thomas to perform any additional response work at the Verona Sites, and the United States reserves the right to institute proceedings in this action or in a new action seeking to reimburse the United States for its response costs and any response action undertaken by U.S. EPA under CERCLA, relating to the Verona Sites, if:

a. for proceedings prior to U.S. EPA certification of completion of final remedial action concerning the Verona Sites,

(i) conditions at the Verona Sites, previously unknown to the United States, are discovered after the entry of this Consent Decree, or

(ii) information is received, in whole or in part, after the entry of this Consent Decree,

and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment; and

b. for proceedings subsequent to U.S. EPA certification of completion of final remedial action concerning the Verona Sites,

(i) conditions at the Verona Sites, previously

unknown to the United States, are discovered after certification of completion by U.S. EPA or (ii) information is received, in whole or in part, after the certification of completion by U.S. EPA, and these previously unknown conditions or this information indicates that the final remedial action is not protective of human health and the environment.

The covenant not to sue set forth in this paragraph shall be null and void and without further effect if, prior to the satisfaction in full of the judgment established by Paragraph IV.C, Richard E. Thomas files a petition in bankruptcy or an involuntary petition in bankruptcy filed against him is granted; further, in the event of such a bankruptcy, or in the event the payment referenced in Paragraph VII.A is not timely made, the claims of the United States against Richard E. Thomas for Federal Response Costs shall not be limited by the amount of the judgment set forth in Paragraph IV.C.

D. In consideration of the entry of judgments referred to in Paragraph IV.D and IV.E, and upon the receipt by the State of timely payments in accordance with Paragraph VII.B and VII.C, the State covenants not to sue or take any other civil judicial or administrative action against Richard E. Thomas, other than enforcing the judgments set forth herein, for the recovery of Response Costs incurred at the Verona Sites or for damages to natural resources arising from Richard E. Thomas' status as an owner or operator of the Annex and the Raymond Road Facility.

This covenant not to sue shall, without limitation, not include or in any way affect any of the following:

1) Claims of the State relating to any criminal liability;

2) Claims of the State based on Richard E. Thomas' failing to comply with the requirements of this consent decree. However, notwithstanding any other provision of this Consent Decree, the State reserves the right to institute proceedings in this action or a new action or to issue an Order seeking to compel Richard E. Thomas to perform any additional response work at the Verona Sites, and the State reserves the right to institute proceedings in this action or in a new action seeking to reimburse the State for its response costs and any response action undertaken by Michigan Department of Natural Resources ("MDNR") under CERCLA or any analogous State law, relating to the Verona Sites, if:

a. for proceedings prior to MDNR certification of completion of final remedial action concerning the Verona Sites,

(i) conditions at the Verona Sites, previously unknown to the State, are discovered after the entry of this Consent Decree, or

(ii) information is received, in whole or in part, after the entry of this Consent Decree, and these previously unknown conditions or this information indicates that the remedial action is

not protective of human health and the environment; and

b. for proceedings subsequent to MDNR certification of completion of final remedial action concerning the Verona Sites,

(i) conditions at the Verona Sites, previously unknown to the State, are discovered after certification of completion by MDNR or

(ii) information is received, in whole or in part, after the certification of completion by MDNR, and these previously unknown conditions or this information indicates that the final remedial action is not protective of human health and the environment.

The covenant not to sue set forth in this paragraph shall be null and void and without further effect if, prior to the satisfaction in full of the judgments established by Paragraph IV.D and IV.E, Richard E. Thomas files a petition in bankruptcy or an involuntary petition in bankruptcy filed against him is granted; further, in the event of such a bankruptcy, or in the event the payments referenced in Paragraph VII.B and VII.C are not timely made, the claims of the State against Richard E. Thomas for State Response Costs and Natural Resource Damages shall not be limited by the amounts of the judgments set forth in Paragraphs IV.D and IV.E.

E. In consideration for the payments referenced in Paragraphs IV.F and G, the United States, on behalf of EPA, and

the State covenant that, when such payments are made, and when either of the following additional conditions is also met

1) the payments required by Paragraphs VII.A and VII.B are timely made, or 2) the Thomas Family Defendants have paid to the United States, in addition to any payments otherwise required by this Decree, \$165,000 within 30 days of entry of this Decree and have paid to the State, in addition to any payments otherwise required by this Decree, \$40,000 within 30 days of entry of this Decree,

they will dismiss their claims against Carol Thomas, Gregg Thomas, Todd Thomas and Steven Thomas asserted in their Supplemental Complaints and will not sue them for any such claims arising out of conveyances to them prior to January 23, 1990 by any of the Thomas Defendants, to the extent such conveyances have been previously disclosed to the state and federal governments. The dismissal and covenant not to sue shall not limit or affect the ability of the United States and the State to seek execution on their judgments or assert any claims with respect to any real property presently owned jointly by Carol Thomas and Richard E. Thomas or the proceeds thereof, or to assert claims arising out of conveyances prior to January 23, 1990 not previously disclosed to the United States and the State.

F. In consideration of the USF&G-TSC Partial Contract Rescission Agreement and upon timely payment of monies required by Paragraphs VII.A and VII.E of this Consent Decree, the United States on behalf of EPA covenants not to sue or assert claims

against USF&G with respect to the insurance coverages rescinded by the USF&G-TSC Partial Contract Rescission Agreement.

G. In consideration of the USF&G-TSC Partial Contract Rescission Agreement and upon timely payment of monies required by Paragraphs VII.B, VII.C and VII.E of this Consent Decree, the State covenants not to sue or assert claims against USF&G with respect to the insurance coverages rescinded by the USF&G-TSC Partial Contract Rescission Agreement.

H. In consideration of the USF&G-TSC Partial Contract Rescission Agreement and upon timely payment of monies required by Paragraphs VII.A, VII.B, VII.C, VII.D and VII.E of this Consent Decree, Grand Trunk covenants not to sue or assert claims against USF&G with respect to the insurance coverages rescinded by the USF&G-TSC Partial Contract Rescission Agreement.

I. Nothing in this Decree is intended as a covenant not to sue or a release from liability for any person or entity other than the Thomas Defendants or the Thomas Family Defendants. The United States and the State of Michigan and Grand Trunk expressly reserve all claims, demands and causes of action either judicial or administrative, past or future, in law or equity, against any person or entity other than the Thomas Defendants and Thomas Family Defendants for any matter arising at or relating in any manner to the Verona Sites. In particular, and without limitation, it is the intent of the parties hereto that the entry of judgments as set forth in Paragraphs IV.A, IV.B, IV.C, IV.D and IV.E shall not in any manner reduce the claims of the United

States and the State against any other jointly and severally liable party except to the extent that such judgments are satisfied by the Thomas Defendants. Further, the Thomas Defendants agree that they shall be entitled to the protection from contribution claims afforded by Section 113(f)(2) of CERCLA only to the extent that the judgments against them established by this Decree are satisfied.

J. These covenants not to sue are not, and shall not be construed to be, a release of any kind.

K. To the extent not otherwise barred, the Thomas Defendants and Grand Trunk explicitly reserve any and all claims, causes of action, and demands against each other and against any person not a party to this Decree.

XI. RESPONSE AUTHORITY

Nothing in this Decree shall be deemed to limit the response authority of the United States under Section 104 of CERCLA, 42 U.S.C. § 9604, or the authority of the United States under Section 106 of CERCLA, 42 U.S.C. § 9606, or the response authority of the State of Michigan under federal or state law.

XII. WAIVER OF CLAIMS

In consideration of the entry of this Decree, the Thomas Defendants agree not to, and shall not, make any claims against the United States or the Hazardous Substances Superfund established by CERCLA Section 221, 42 U.S.C. § 9631, including any claim pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. § 9611 and § 9612, for Federal Response Costs or for State

Response Costs, or for reimbursement of any costs incurred by the Thomas Defendants at the Verona Sites, or for any attorneys' fees related to this action. Similarly, the Thomas Defendants agree not to, and shall not, make any claims against the State of Michigan for reimbursement of any State Response Costs or for reimbursement of any costs incurred by the Thomas Defendants at the Verona Sites prior to the entry hereof, or for any attorneys' fees related to this action.

XIII. FINDINGS OF FACT AND DECLARATIONS
AS TO FUTURE LIABILITY

For purposes of this decree, applicable only to these actions or any subsequent actions commenced by the United States, the State of Michigan, or Grand Trunk, and applicable only to the United States, the State of Michigan and Grand Trunk, the Thomas Defendants shall not contest any of the following findings of fact and declarations of liability:

A. Raymond Road Facility

Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company will be liable to the United States for all response costs as they are incurred by the United States after the August 30, 1989 and to the State of Michigan for all response costs as they are incurred by the State of Michigan after November 30, 1989, with respect to the release or threat of release of hazardous substances at the Raymond Road facility to

the extent such costs are expended in a manner not inconsistent with the National Contingency Plan.

B. Annex

Thomas Solvent Company; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company will be jointly and severally liable to the United States for response costs as they are incurred by the United States after August 30, 1989, and to the State of Michigan for response costs as they are incurred by the State of Michigan after November 30, 1989, with respect to the release or threat of release of hazardous substances at the Annex, to the extent such costs are expended in a manner not inconsistent with the National Contingency Plan.

C. Verona Well Field

Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas Solvent Company of Muskegon, Inc.; Thomas Solvent Inc. of Indiana; and TSC Transportation Company will be jointly and severally liable to the United States for response costs as they are incurred by the United States after August 30, 1989, and to the State of Michigan for response costs as they are incurred by the State of Michigan after November 30, 1989, with respect to the release or threat of release of hazardous substances at the Verona Well Field to the extent such costs are expended in a manner not inconsistent with the National Contingency Plan.

XIV. ALLOCATION OF RECOVERED FUNDS

A. The United States agrees that 24% of any amounts received by it pursuant to Sections VI and VII, except Section VII.D, shall be allocated to Federal Gap Response Costs and shall reduce its claims against Grand Trunk for Federal Gap Response Costs.

B. The State agrees that 22% of any amounts received by it pursuant to Paragraphs VI and VII, except Paragraphs VII.C and VII.D, shall be allocated to State Gap Response Costs and shall reduce its claims against Grand Trunk for State Gap Response Costs.

C. The United States and the State agree that all sums received from Grand Trunk pursuant to Paragraphs V.D, V.E and VII.D shall be allocated to Federal Gap Response Costs and State Gap Response Costs respectively, and shall reduce their claims against Grand Trunk for such costs.

XV. RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter for the purpose of enforcing or interpreting the terms of this Decree.

XVI. USE OF DECREE

This Decree was negotiated and executed by the parties in good faith to avoid further expense and protracted litigation and to resolve certain claims which were contested as to validity and amount. With the exception of this proceeding, any proceeding to

enforce this Decree, any proceeding between a party and an insurance company, and any proceeding for contribution or indemnity brought by a party to this Decree, it is the intent of the parties that this Decree shall not be admissible or be deemed an admission in any other action on any issue relating to the conduct or liability of the Thomas Defendants, except to the extent the Decree is offered into evidence by a party to this Decree in support of a claim or defense of such party.

XVII. NOTICES

Whenever, for purposes of this Decree: one party wishes to give notice to another, notice is required to be given, a document is required to be forwarded by one party to another, or service of any papers or process is necessitated or allowed by any provision of this Decree, such notice or other documents shall be directed to the following individuals at the addresses specified below:

For the United States:

Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
10th & Penn. Ave., NW
Washington, D.C. 20530
(Ref. No. 90-11-2-140)

-and-

Director
Waste Management Division
U.S. Environmental Protection Agency
Region V [5HS-11]
230 S. Dearborn
Chicago, Illinois 60604

-and-

Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V [SCS]
230 S. Dearborn
Chicago, Illinois 60604

For the State:

Assistant Attorney General In Charge
Environmental Protection Division
Office of the Attorney General
State of Michigan
720 Law Building
525 West Ottawa Street
Lansing, Michigan 48913

For Grand Trunk Western Railroad:

John A. Ponitz
General Counsel
Grand Trunk Western Railroad
1333 Brewery Road
Detroit, Michigan 48207-2602

-and-

Fredrick J. Dindoffer, Esq.
Bodman, Longley & Dahling
100 Renaissance Center
34th Floor
Detroit, Michigan 48243

For the Thomas Defendants and Thomas Family Defendants:

Charles E. Barbieri, Esq.
Foster, Swift, Collins and Smith
313 South Washington Square
Lansing, Michigan 48933

-and-

James M. Sullivan, Esq.
Sullivan Hamilton Schulz Kreter and Toth
10th Floor
Comerica Bank Building
25 West Michigan Mall
Battle Creek, Michigan 49017

XVIII. PUBLIC NOTICE AND COMMENT

The parties acknowledge that final approval by the United States and entry of this Partial Consent Decree is subject to receipt of public comments by the Department of Justice during a 30 day comment period following publication of notice of this Partial Consent Decree in the Federal Register.

BY THEIR COUNSEL, THE PARTIES ENTER INTO THIS CONSENT DECREE AND
SUBMIT IT TO THE COURT, THAT IT MAY BE APPROVED AND ENTERED.

FOR PLAINTIFF, THE UNITED STATES OF AMERICA

12/12/90

Date

Ray Van Cleave for
RICHARD E. STEWART
Assistant Attorney General
Environment and Natural Resources
Division

December 11, 1990

Date

Joel Gross
JOEL M. GROSS
MICHAEL J. McNULTY
THOMAS A. MARIANI, JR.
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530
(202) 514-5403

JOHN A. SMIETANKA
United States Attorney
Western District of Michigan

December 12, 1990

Date

By:

J. A. M... for and w/ authority from
JANICE WITTEL MANN
Assistant United States Attorney

December 5th, 1990.

Date

Valdas V. Adamkus
VALDAS V. ADAMKUS
Regional Administrator
United States Environmental
Protection Agency, Region V

December 3, 1990

Date

Roger Grimes
ROGER GRIMES
Assistant Regional Counsel
United States Environmental
Protection Agency, Region V

December 11, 1990

Date

James M. Strock
JAMES M. STROCK
Assistant Administrator
for Enforcement
United States Environmental
Protection Agency

FOR PLAINTIFF THE STATE OF MICHIGAN

11-30-90
Date

Frank J. Kelley
FRANK J. KELLEY
Attorney General of Michigan

12/3/90
Date

A. Michael Leffler
A. MICHAEL LEFFLER
Assistant Attorney General
in Charge
Environmental Protection Division

11/30/90
Date

Robert P. Reichel
ROBERT P. REICHEL
KATHLEEN L. CAVANAUGH
Assistant Attorney General
Environmental Protection Division
720 Law Building
525 West Ottawa Street
Lansing, Michigan 48913

FOR DEFENDANT GRAND TRUNK WESTERN RAILROAD COMPANY

26 Nov 90
Date

John A. Ponitz
JOHN A. PONITZ
General Counsel

November 26, 1990
Date

Fredrick J. Dindoffer
JAMES A. SMITH
FREDRICK J. DINDOFFER
Bodman, Longley & Dahling
100 Renaissance Center
34th Floor
Detroit, Michigan 48243

FOR THE THOMAS DEFENDANTS

November 20, 1990

Date

Ch. E. Barbieri

CHARLES E. BARBIERI
Foster, Swift, Collins and Smith
313 South Washington Square
Lansing, Michigan 48933

Nov. 16, 1990

Date

James M. Sullivan

JAMES M. SULLIVAN
Sullivan Hamilton Schulz Kreter
and Toth
10th Floor
Comerica Bank Building
25 West Michigan Mall
Battle Creek, Michigan 49017

Nov. 15, 1990

Date

Richard E. Thomas

RICHARD E. THOMAS
Individually and on behalf of the Thomas
Defendants and the Richard E. Thomas
Living Trust

Nov. 15, 1990

Date

Carol Thomas

CAROL THOMAS

Nov 17, 1990
Date

Gregg Thomas
GREGG THOMAS

Nov 17, 1990
Date

Todd Matthew Thomas
TODD M. THOMAS

Nov 19, 1990
Date

Steve Thomas
STEVEN THOMAS

November 16, 1990
Date

Letha D. Thomas
LETHA D. THOMAS

EXHIBIT

Summary of State Response Cost Claims Against Thomas Defendants

Phase I	Response Costs through 6/30/87, as set forth in Pre-Trial Order, p. 398	+ 949,723
LESS	Thomas Solvent Bankruptcy Proceeds	- 82,874
LESS	Grand Trunk Settlement for Phase I	- 448,057
Phase II	Response Costs - 7/1/87 through 11/30/89, including:	
	- Litigation	+ 277,364
	- Michigan Dep't. of Public Health	+ 8,075
	- Michigan Dep't. of Natural Resources	+ 485,867
	- Health Effects Study	+ 227,215
	Prejudgment Interest on State Response Costs for Phases I and II	+ 499,392
	Prejudgment Interest on Advance Match to U.S. EPA	+ 437,884
	LESS Grand Trunk Settlement for Phase II Claims	- 159,433
TOTAL		<u>\$ 2,195,156</u>