

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, <i>ex rel.</i>)	
JOE CAPUTO,)	
)	
Plaintiff,)	No. 03 C 373 (UNDER SEAL)
)	
v.)	Chief Judge Holderman
)	
MPC PRODUCTS CORPORATION, MPC)	FILED IN CAMERA AND UNDER
INTERNATIONAL, INC., JOE ROBERTI,)	SEAL
and Does 1-100,)	
)	
Defendants.)	

STIPULATION FOR ENTRY OF CONSENT JUDGMENT

Parties

1. This stipulation for entry of consent judgment is entered into among the United States of America, acting through the United States Attorney for the Northern District of Illinois and on behalf of the U.S. Department of Defense; the Relator, Joe Caputo (“Relator”); and the MPC Products Corporation, Joan H. Roberti, Executor, Estate of Joseph Roberti, and Maribeth R. Gentry, Executor, Estate of Vincent Roberti (together referred to as “the MPC defendants”), acting through their attorneys. The United States, Relator and the MPC defendants are referred to collectively in this stipulation as “the parties.”

Preamble

As a preamble to this stipulation, the parties agree to the following:

2. MPC Products Corporation is a manufacturer and supplier of electronic and mechanical parts used in the construction and repair of military aircraft and other military defense

systems. MPC Products Corporation is incorporated in the State of Illinois and has production facilities located in Skokie and Niles, Illinois.

3. Joseph Roberti was president of MPC Products Corporation at the time of his death in January 2008. Vincent Roberti was executive vice-president of MPC Products Corporation at the time of his death in October 2006. Concurrent with the filing of this stipulation, the parties are filing an agreed motion to substitute Joan H. Roberti, Executor, Estate of Joseph Roberti, for defendant Joseph Roberti, and Maribeth R. Gentry, Executor, Estate of Vincent Roberti, for defendant Vincent Roberti.

4. On January 17, 2003, Relator filed a *qui tam* action in the United States District Court for the Northern District of Illinois, captioned *United States of America ex rel. Joe Caputo v. MPC Products Corporation; MPC International, Inc., Joe Roberti, and Does 1-100*, No. 03 C 373 (hereinafter “this civil action”). Relator was previously employed by MPC Products Corporation. On February 7, 2007, the United States moved for and the court granted a partial lifting of the seal, for the limited purpose of allowing the United States to disclose this *qui tam* to defendants and to discuss possible settlement.

5. The United States contends that it has certain civil claims, as specified in paragraph 13, below, against the MPC defendants for engaging in the following: During the period 1993 to 2005, the MPC defendants intentionally overcharged the U.S. Department of Defense, and prime contractors of the U.S. Department of Defense, by falsifying cost or pricing data used to negotiate the contracts and basic ordering agreements N00383-96-G-007F, N00383-00-G-001F, N00383-04-G-002F, SP0475-03-D-0366, DAAH23-03-C-0063, W31P4Q-04-D-0018, W58RGZ-05-D-0078, W58RGZ-04-D-0285, DAAH23-03-D-0330, N00019-99-C-1226 and N00019-04-C-0014, and thereby causing the U.S. Department of Defense to award and pay these

contracts and basic ordering agreements in amounts larger than would have been awarded and paid if true and accurate cost or pricing data had been submitted by the MPC defendants (hereinafter referred to as the “Covered Conduct.”). Concurrent with the filing of this stipulation, the United States is filing a notice of election to intervene in this civil action.

6. This stipulation is neither an admission of liability by the MPC defendants nor a concession by the United States that its claims are not well founded. In order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation, the parties agree to the terms and conditions set forth below.

Terms and Conditions

7. The MPC defendants agree to pay the United States \$22,500,000 (“the Settlement Amount”). The MPC defendants further agree to pay Relator \$252,320.74 for expenses and attorney’s fees and costs. Contingent upon the United States receiving the full Settlement Amount from the MPC defendants, the United States agrees to pay \$4,500,000 to Relator. The foregoing payments shall be made as follows:

a. The MPC defendants agree to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to instructions to be provided by the United States Attorney’s Office. The MPC defendants agree to make this electronic funds transfer no later than five business days after the effective date of this stipulation.

b. Contingent upon the United States receiving the full Settlement Amount from the MPC defendants, and as soon as feasible after receipt, the United States agrees to pay \$4,500,000 to Relator by electronic funds transfer.

c. The MPC defendants also agree to pay Relator a lump sum payment of \$252,320.74 no later than five business days after the effective date of this stipulation. This lump

sum payment shall be made by electronic funds transfer pursuant to instructions to be provided by Relator's counsel.

8. In addition to this stipulation for a consent judgment, MPC Products Corporation is entering into a plea agreement in a criminal prosecution arising out of the same facts as this civil action. The MPC Products Corporation plea agreement recommends a criminal fine in the amount of \$2,500,000 (subject to court approval). Payment of a criminal fine or penalty by MPC Products Corporation shall be separate and apart from this civil consent judgment, and shall not be credited against the Settlement Amount agreed to by this civil consent judgment.

9. The United States can, under the law, record judgment liens against the MPC defendants to secure payment of the consent judgment agreed to by this stipulation. The proceeds from the sale of any real estate in which the MPC defendants have an interest may be used to satisfy a portion or all of the consent judgment agreed to by this stipulation. Unless stated otherwise, nothing in this stipulation shall be interpreted to prevent the United States from employing any lawful remedy to enforce the judgment.

10. The MPC defendants agree to notify the United States Attorney's Office within thirty days of any change of address until the judgment debt is paid in full.

11. In the event the MPC defendants default on the payment set forth in paragraph 7a, above, the entire balance of the consent judgment, including post-judgment interest, shall immediately become due and payable, and the United States may proceed with available administrative and judicial remedies to enforce the judgment debt, upon notice to the MPC defendants.

12. Notice pursuant to paragraph 11, above, shall be deemed due and sufficient notice if sent by first class mail, postage prepaid, to the MPC defendants' addresses as listed below or to any new address provided by the MPC defendants.

13. Subject to the exceptions in paragraph 15 below (concerning excluded claims), in consideration of the obligations of the MPC defendants in this stipulation, conditioned upon the MPC defendants' full payment of the Settlement Amount, and subject to paragraph 25 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this stipulation), the United States, for itself, its agencies, departments, employees, and agents, agrees to release the MPC defendants, together with MPC Products Corporation's current and former officers, directors, and employees, and their heirs, beneficiaries, successors and assigns, from any civil or administrative monetary claim the United States has or may have 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 payment by mistake, unjust enrichment, breach of contract, and fraud. No other entities or individuals are released by this stipulation.

14. Subject to the exceptions in paragraph 15 below (concerning excluded claims), in consideration of the obligations of the MPC defendants in this stipulation, conditioned upon the MPC defendants' full payment of the Settlement Amount, and subject to paragraph 25 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this stipulation), Relator, for himself individually, and for his heirs, beneficiaries, successors, attorneys, agents, and assigns, but not on behalf of the United States, agrees to release the MPC defendants, together with MPC Products Corporation's current and former officers, directors, and employees, and their heirs, beneficiaries, successors and assigns, from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action,

suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, which he now has, owns or holds, or claims to have, own or hold, or which he may at any time hereinafter have, own or hold, or claims to have, own or hold, against any of them as of the date of execution of this stipulation. This general release by Relator, but not the United States, is intended to be as broad as possible, and to cover every conceivable contingency and theory of liability, contractual, statutory, tortuous or otherwise, which might arise in the future, or which may have arisen in the past, whether known or unknown or suspected or unsuspected at this time.

15. Notwithstanding any term of this stipulation, specifically reserved and excluded from the scope and terms of this stipulation as to any entity or person (including the MPC defendants and Relator) are the following possible claims of the United States:

- a. Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability for any individuals or entities;
- c. Except as explicitly stated in this stipulation, any administrative action or liability, including but not limited to suspension or debarment;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this stipulation.
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due; or

h. Any liability for injury to persons or property, including liability for any mishap or crash of aircraft.

16. Relator, for himself individually, and for his heirs, beneficiaries, successors, attorneys, agents, and assigns, agrees not to object to this stipulation and agrees and confirms that this stipulation is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and, conditioned upon receipt of Relator's share, Relator, for himself individually, and for his heirs, beneficiaries, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its agencies, departments, employees, and agents, from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of this civil action; and from any other claims for a share of the Settlement Amount; and in full settlement of any claims Relator may have under this stipulation. This stipulation does not resolve or in any manner affect any claims the United States has or may have against Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this stipulation.

17. The MPC defendants have provided financial information to the United States and the United States has relied on the accuracy and completeness of this financial information in reaching this stipulation. The MPC defendants warrant that the financial information provided by them is complete, accurate, and current, as of the date it was submitted. If the United States learns of asset(s) in which the MPC defendants had an interest at the time of this stipulation that were not disclosed in the financial information, or if the United States learns of any misrepresentation by the MPC defendants on, or in connection with, the financial information, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the financial information by \$1,000,000 or more, the United States may at its option: (a) rescind this stipulation and file suit based on the Covered Conduct, or (b) let this stipulation stand and collect the full Settlement

Amount plus one hundred percent (100%) of the value of the net worth of the MPC defendants previously undisclosed. The MPC defendants agree not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

18. In the event that the United States, pursuant to paragraph 17, above, opts to rescind this stipulation, the MPC defendants agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 90 calendar days of written notification to the MPC defendants that this stipulation has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on January 17, 2003. In the event that the United States, pursuant to paragraph 17, above, recovers the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of the MPC defendants previously undisclosed, the United States agrees to pay the Relator 20 percent (20%) of the additional proceeds recovered from the MPC defendants in excess of the full Settlement Amount.

19. The MPC defendants waive and shall not assert any defenses they 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 stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this stipulation 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.

20. The MPC defendants, for themselves, and for their current and former officers, directors, employees, shareholders, beneficiaries, and agents, and their successors and assigns, fully and finally release the United States, its agencies, departments, employees, and agents, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that they asserted, could have asserted, or may assert in the future against the United States, its agencies, departments, employees, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

21. The MPC defendants, for themselves, and for their current and former officers, directors, employees, shareholders, beneficiaries, and agents, and their successors and assigns, fully and finally release Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the MPC defendants have asserted, could have asserted, or may assert in the future against Relator, related to the Covered Conduct and Relator's investigation and prosecution thereof.

22. The MPC defendants agree to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the MPC defendants or their current and former officers, directors, employees, shareholders, beneficiaries, or agents, or their successors or assigns, in connection with:

- i. the matters covered by this stipulation and the parallel criminal plea of MPC Products Corporation;
- ii. the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this stipulation;

- iii. The MPC defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the matters covered by this stipulation (including attorney's fees);
- iv. the negotiation and performance of this stipulation and the parallel criminal plea of MPC Products Corporation;
- v. the payment the MPC defendants make to the United States pursuant to this stipulation and any payments that the MPC defendants may make to Relator, including costs and attorney's 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 the MPC defendants, and the MPC defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The MPC defendants further agree that within 90 days of the effective date of this stipulation, MPC Products Corporation shall identify any unallowable costs (as defined in this paragraph) included in payments previously sought by MPC Products Corporation or any of its subsidiaries or affiliates from the United States. The MPC defendants agree that the United States, at a minimum, shall be entitled to recoup from them any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs in any such payments. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by MPC Products

Corporation or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by the MPC defendants, or the effect of any such Unallowable Costs on the amount of such payments.

d. Nothing in this stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine MPC Products Corporation's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

23. This stipulation is intended to be for the benefit of the parties only. Except as otherwise set forth in this stipulation, the parties do not release any claims against any other person or entity.

24. The MPC defendants warrant that they have reviewed their financial situations and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the parties warrant that, in evaluating whether to execute this stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to the MPC defendants, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which the MPC defendants were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

25. If within 91 days of the effective date of this stipulation or of any payment made under this stipulation, any of the MPC defendants commences, or a third party commences, any case,

proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of the MPC defendants' debts, or seeking to adjudicate any of the MPC defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for any of the MPC defendants or for all or any substantial part of the MPC defendants' assets, the MPC defendants agree as follows:

a. The MPC defendants obligations under this stipulation may not be avoided pursuant to 11 U.S.C. § 547, and the MPC defendants will not argue or otherwise take the position in any such case, proceeding, or action that: (i) the MPC defendants' obligations under this stipulation may be avoided under 11 U.S.C. § 547; (ii) the MPC defendants were insolvent at the time this stipulation was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this stipulation do not constitute a contemporaneous exchange for new value given to the MPC defendants.

b. If the MPC defendants' obligations under this stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this stipulation, and bring any civil and/or administrative claim, action, or proceeding against the MPC defendants for the claims that would otherwise be covered by the releases provided in paragraphs 13 and 14 above. The MPC defendants agree that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this paragraph, and that the MPC defendants will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) the MPC defendants will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar

theories, to any such civil or administrative claims, actions, or proceeding which are brought by the United States within 180 calendar days of written notification to the MPC defendants that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on January 17, 2003; and (iii) the United States has a valid claim against the MPC defendants in the amount of \$33,750,000, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this paragraph, as well as in any other case, action, or proceeding. In the event that the United States brings any civil and/or administrative claim, action, or proceeding against the MPC defendants pursuant to this paragraph, and recovers proceeds from the MPC defendants for the for the Covered Conduct, the United States agrees to pay the Relator 20 percent (20%) of the proceeds recovered from the MPC defendants for the Covered Conduct.

c. The MPC defendants acknowledge that their agreements in this paragraph are provided in exchange for valuable consideration provided in this stipulation.

26. Except as expressly provided to the contrary in this stipulation, the United States, Relator, and the MPC defendants agree that they shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this stipulation.

27. The MPC defendants represent that this stipulation is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

28. Relator represents that this stipulation is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

29. This stipulation is governed by the laws of the United States. The parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this stipulation will be the United States District Court for the Northern District of Illinois.

30. For purposes of construction, this stipulation shall be deemed to have been drafted by all parties to this stipulation and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

31. This stipulation constitutes the complete agreement between the parties. This stipulation may not be amended except by written consent of the parties.

32. The individual(s) signing this stipulation on behalf of the MPC defendants represent and warrant that they are authorized by the MPC defendants to execute this stipulation. The individual(s) signing this stipulation on behalf of Relator represent and warrant that they are authorized by Relator to execute this stipulation. The United States signatories represent that they are signing this stipulation in their official capacities and that they are authorized to execute this stipulation.

33. This stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. In addition, facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this stipulation.

34. This stipulation is binding on the MPC defendants' individually, and on their current and former officers, directors, employees, shareholders, beneficiaries, and agents, and their successors and assigns.

35. This stipulation is binding on Relator individually, and on his heirs, beneficiaries, successors, attorneys, agents, and assigns.

36. This is a publicly available document and all parties consent to the United States' disclosure of this stipulation, and information about this stipulation, to the public. The MPC defendants and Relator further waive any claim that this or any other document filed in this case along with any information contained therein is subject to the Privacy Act of 1974, 5 U.S.C. § 552a.

37. Once this stipulation has been fully executed by the parties, the United States shall file with the court a notice of election to intervene in this civil action, the agreed motions to substitute executors, attached hereto as Exhibits A and B, and the agreed motion for entry of consent judgment, attached hereto as Exhibit C. The district court shall retain jurisdiction over this case for purposes of enforcing this stipulation and the court's consent judgment order.

38. The effective date of this stipulation is the date upon which the court enters the consent judgment agreed to by this stipulation.

UNITED STATES OF AMERICA

Dated: _____

PATRICK J. FITZGERALD
United States Attorney

By:

SAMUEL S. MILLER
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-9083
samuel.s.miller@usdoj.gov

MPC PRODUCTS CORPORATION

Dated: _____

By: _____
DENNIS BENNING
President
MPC Products Corporation

Dated: _____

By: _____
GARY S. LINCENBERG
JOHN K. RUBINER
Bird, Marella, Boxer, Wolpert, Nessim, Drooks
& Lincenberg
1875 Century Park East, 23rd Floor
Los Angeles, California 90067
(310) 201-2100
Attorneys for MPC Products Corporation

JOAN H. ROBERTI, Executor, Estate of
Joseph Roberti

Dated: _____

By: _____
JOAN H. ROBERTI
Executor, Estate of Joseph Roberti

Dated: _____

By: _____
GARY S. LINCENBERG
JOHN K. RUBINER
Bird, Marella, Boxer, Wolpert, Nessim, Drooks
& Lincenberg
1875 Century Park East, 23rd Floor
Los Angeles, California 90067
(310) 201-2100
Attorneys for Joan H. Roberti, Executor, Estate
of Joseph Roberti

MARIBETH R. GENTRY, Executor, Estate of
Vincent Roberti

Dated: _____

By: _____
MARIBETH R. GENTRY
Executor, Estate of Vincent Roberti

Dated: _____

By: _____
GARY S. LINCENBERG
JOHN K. RUBINER
Bird, Marella, Boxer, Wolpert, Nessim, Drooks
& Lincenberg
1875 Century Park East, 23rd Floor
Los Angeles, California 90067
(310) 201-2100
Attorneys for Maribeth R. Gentry, Executor,
Estate of Vincent Roberti

JOE CAPUTO

Dated: _____

By: _____
JOE CAPUTO

Dated: _____

By: _____
MARK KLEIMAN
2907 Stanford Avenue
Venice, California 90292
(310) 306-8094
Attorney for Joe Caputo

Dated: _____

By: _____
DENNIS FAVARO
Favaro & Gorman, Ltd.
835 Sterling Avenue, Suite 100
Palatine, Illinois 60067
Attorney for Joe Caputo