

## **SETTLEMENT AGREEMENT**

### **PARTIES**

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Defense, and Howmet Aluminum Castings Inc. ("Howmet"), through their authorized representatives.

### **PREAMBLE**

As a preamble to this Agreement, the Parties agree to the following:

A. Howmet is a manufacturer of aluminum investment castings, such as electrical chassis boxes, housings, and small secondary structures. Prior to the sale of the facility in December 2007, Howmet operated a plant in Bethlehem, Pennsylvania. Among the castings that Howmet manufactured were parts used by the United States as part of military aircraft and weapons systems. Howmet manufactured these parts as a sub-contractor or lower tier sub-contractor for other defense contractors.

B. This Agreement follows a voluntary disclosure by Howmet, first made in 2005 under the Department of Defense Voluntary Disclosure Program. Howmet has provided information to the United States under the resulting Voluntary Disclosure Agreement, including but not limited to a written report dated October 13, 2006. Howmet has voluntarily disclosed that it shipped certain parts to its customers that may have been incorporated into military aircraft and weapons systems but not inspected in accordance with Howmet's contractual requirements relating to such parts. Howmet has voluntarily disclosed, that:

1. For some parts, proper nondestructive testing processes and procedures were not followed;

2. Some nondestructive testing processes and procedures were conducted by unauthorized or unqualified personnel;
3. Some parts were shipped without having undergone the required radiographic (x-ray) examination;
4. Some parts were marked as having been inspected by a senior radiographer when in fact they had been inspected by a less qualified radiographer than Howmet's contract required;
5. Some parts were shipped based on inspections of deficient samples;
6. Some parts were inspected using outdated radiographical techniques or using procedures that were otherwise deficient;
7. Some inspectors had failed required eye exams or had failed to take required eye exams; and
8. Some of the parts that had been shipped were not compliant with the contract and should have been rejected because they contained actual or potential defects.

C. The United States contends that it has certain civil causes of action, as specified in Paragraphs 2 and 3, below, against Howmet for engaging in the following conduct disclosed in the voluntary disclosure filed by Howmet: submission of parts under military contracts that had not been inspected properly prior to their submission and false certification that such parts had been properly inspected from January 1, 2004 through July 1, 2005. The conduct described in this Paragraph C or Paragraph B above is collectively hereinafter referred to as the "Covered Conduct."

D. The United States also contends that it has certain administrative claims, as specified in Paragraphs 2 and 3 below, against Howmet for engaging in the Covered Conduct.

E. Howmet denies any liability for the claims specified in the Covered Conduct or under the Paragraphs of this Preamble.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

#### **TERMS AND CONDITIONS**

1. Howmet agrees to pay to the United States \$536,492.57. This payment shall be made within thirty (30) business days from the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney's Office for the Eastern District of Pennsylvania no later than ten (14) calendar days after the Effective Date of this Agreement. Howmet agrees that if the settlement amount is not paid in full within the time required, then Howmet shall be in material breach of this Agreement.

2. Subject to the exceptions in Paragraph 3 below, in consideration of the obligations of Howmet in this Agreement and conditioned upon Howmet's full payment of the Settlement Amount pursuant to Paragraph 1, and subject to Paragraph 10, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Howmet together with the following parents, predecessors, direct and indirect subsidiaries, brother or sister corporations, and/or divisions, and the successors and assigns of any of them, 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; the Contract Disputes Act, 41 U.S.C. §§ 7101-09; or the common law theories of payment by mistake, breach of contract, unjust enrichment, misrepresentation and fraud.:

Alcoa Inc.; Alcoa Domestic LLC; Howmet Corporation; Alcoa Ltd.; Howmet Castings & Services, Inc.; Howmet Aluminum Casting Inc.; Tempcraft Corporation; Howmet Transport Services Inc.; Turbine Components Corporation; Howmet Holdings Corporation; Howmet International Inc. Because Howmet voluntarily disclosed the Covered Conduct to the United States, has cooperated fully with the United States' investigation, and has voluntarily provided to the United States all information the United States has requested regarding the conduct of specific individuals and its relation to the Covered Conduct, allowing the United States to assess the conduct and response of those individuals relative to the Covered Conduct, the United States also agrees to release the current and former officers, directors, employees, and shareholders of Howmet and the above-listed entities 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; the Contract Disputes Act, 41 U.S.C. §§ 7101-09; or the common law theories of payment by mistake, breach of contract, unjust enrichment, misrepresentation and fraud.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Howmet) are the following 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;
- c. Except as explicitly stated in this Agreement, any administrative liability, including debarment and suspension;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any common law liability for express or implied warranty claims or for defective or deficient products or services; and

g. Except as explicitly stated in this Agreement, any liability of individuals.

4. It is expressly understood that this Agreement does not resolve or release the suspension and debarment rights of any federal agency, including the right to reach an administrative agreement with Howmet.

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

6. Howmet and its current and former officers, directors, shareholders, parents, affiliates, successors and assigns, fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Howmet or its current and former officers, directors, shareholders, parents, affiliates, successors and assigns asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation thereof.

7. This Agreement is intended to be for the benefit of the United States and Howmet only. The terms of this Agreement are in no way intended to, nor are they to be construed to, work a release of liability or in any way create a benefit in favor of any person not a party to this Agreement, except as expressly provided herein.

8. Howmet agrees to the following:

a. Unallowable Costs Defined: The Parties agree that all costs (as defined by Federal Acquisition Regulation § 31.205-47(a)) incurred in connection with the following by or on behalf of Howmet and its officers, directors, agents and employees, shall be unallowable costs for government contracting purposes:

- (1) the matters covered by this Agreement,
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,
- (3) investigative, defense, and corrective actions undertaken by Howmet in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (4) the negotiation and performance of this Agreement, and
- (5) the payment Howmet makes to the United States pursuant to this Agreement, including any costs and attorneys fees.

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Howmet, and Howmet shall not charge such unallowable costs directly or indirectly to any contracts with the United States, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Howmet or any of its subsidiaries or affiliates to the United States.

c. Nothing in this Agreement shall constitute a waiver of any rights of the United States to audit, examine, or re-examine the facility's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

9. Howmet warrants that it has reviewed its financial situation and that it is 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 Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Howmet, 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 and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Howmet was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

10. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Howmet represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. This Agreement 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 Agreement is the United States District Court for the Eastern District of Pennsylvania.

13. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

14. The individuals signing this Agreement on behalf of Howmet represent and warrant that they are authorized by Howmet to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Such counterparts may be electronic copies of physical documents, including but not limited to facsimiles, .pdf images, .tiff images, and other, similar electronic formats.

16. This Agreement is binding on the successors, transferees, heirs, and assigns of Howmet.

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

18. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). In accordance with Paragraph 16 above, facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

(Continued on next page)

THE UNITED STATES OF AMERICA

DATED:

9/30/2011

BY:

  
ZANE DAVID MEMEGER  
United States Attorney

DATED:

9-30-11

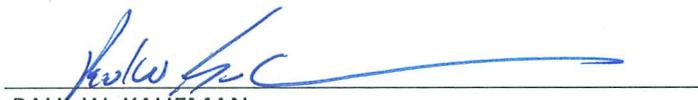
BY:

  
MARGARET L. HUTCHINSON  
Assistant United States Attorney  
Chief, Civil Division

DATED:

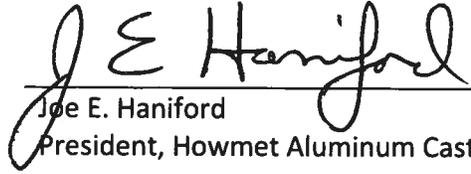
9/30/2011

BY:

  
PAUL W. KAUFMAN  
Assistant United States Attorney

**HOWMET ALUMINUM CASTINGS INC.**

DATED: 9/30/11 BY:

  
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Joe E. Haniford  
President, Howmet Aluminum Castings Inc.