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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION No. 2484CV03006 E

COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
v.)
)
JDC DEMO & ABATEMENT LLC, JDC)
DEMOLITION COMPANY, INC. JOHN)
MORIARTY AND ASSOCIATES, INC., and)
TRC COMPANIES, INC.)
)
Defendant(s).)

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2025 JAN 22 A 10:49
JOHN MORIARTY
CLERK

**ASSENTED TO JOINT MOTION FOR ENTRY OF SEPARATE AND FINAL
JUDGMENT PURSUANT TO M.R.C.P. 54(b) AS TO JOHN MORIARTY AND
ASSOCIATES, INC.**

Pursuant to Massachusetts Rule of Civil Procedure 54(b) ("Rule 54(b)"), the Plaintiff, Commonwealth of Massachusetts (hereinafter referred to as the "Commonwealth"), and the Defendant, John Moriarty and Associates, Inc. (hereinafter referred to as the "Settling Defendant"), jointly move for entry of a separate and final judgment as to the Settling Defendant in the form attached as Attachment A. In support of this motion, the Commonwealth and Settling Defendant state as follows:

1. The Commonwealth and the Settling Defendant have reached a settlement of all of the Commonwealth's claims against the Settling Defendant asserted in the Complaint in this action. This agreement is embodied in a proposed Consent Judgment which is the subject of and attached to this motion. The Consent Judgment requires the Settling Defendant to pay a civil

penalty to fully resolve the Settling Defendant's alleged liability for all violations of the Massachusetts Clean Air Act, G.L. c. 111, §§ 142A-O ("CAA"), and its regulations at 310 C.M.R. § 7.15 ("Asbestos Regulations") that are alleged in the Commonwealth's Complaint. The Settling Defendant denies the Commonwealth's allegations and denies that it committed the alleged violations.

2. Although the Consent Judgment fully resolves all of the Commonwealth's claims against the Settling Defendant that are set forth in the Complaint, it does not dispose of any of the Commonwealth's claims against JDC Demo & Abatement LLC or JDC Demolition Company, Inc. (hereinafter referred to as the "Non-Settling Defendants").¹ **The Non-Settling Defendants do not oppose and have assented to the filing of this Motion.**

3. Rule 54(b) provides that a court may direct the entry of a final judgment as to one or more but fewer than all of the parties "upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Mass. R. Civ. P. 54(b). A "Rule 54(b) certification" is valid where (1) the action involves multiple claims or multiple parties; (2) the court adjudicates as to at least one, but fewer than all, of the claims or parties; (3) the court expressly finds no just reason for delay; and (4) the court expressly directs the entry of judgment. *See Long v. Wickett*, 50 Mass. App. Ct. 380, 386 (2000).

4. The instant action involves multiple defendants, and the attached Consent Judgment, once entered, would reflect an adjudication of all of the claims against only one of the four defendants in this action, satisfying the first and second of the above-listed elements.

¹ This Court has already resolved the Commonwealth's claims against the only other defendant originally named in the Complaint, TRC Companies, Inc. ("TRC"), by way of grant of a previous motion for separate and final judgment and entry of a Consent Judgment on December 17, 2024, terminating TRC's involvement in this matter,

5. In addition, the third and fourth elements are met: there is no just reason for delay of entry of judgment as to the Settling Defendant in this matter, and the Court accordingly should direct such entry. *See Acme Eng'g & Mfg. Corp. v. Airadyne Co., Inc.*, 9 Mass. App. Ct. 762, 764 (1980); 7 JAMES W. SMITH & HILLER B. ZOBEL, MASS. PRACTICE § 54.6 (2d. ed. 2007). A court may find no just reason for delay where a party would suffer hardship or injustice if it were required to wait for all claims against all defendants to be resolved, and where entry of judgment would not frustrate judicial economy by, for example, resulting in piecemeal appeals. *See Kobico, Inc. v. Pipe*, 44 Mass. App. Ct. 103, 104 n.2 (1997). “[R]eview of the determination of the presence or absence of a just reason for delay . . . is left to the sound discretion of the trial judge and is subject to reversal only for an abuse of that discretion.” *O. Ahlborg & Sons, Inc. v. Massachusetts Heavy Indus., Inc.*, 65 Mass. App. Ct. 385, 392 (2006), quoting *Long*, 50 Mass. App. Ct. at 386.

6. In this case, the Settling Defendant would suffer harm if made to wait until resolution of the Commonwealth’s claims against the Non-Settling Defendants, and entry of the proposed Consent Judgment would promote rather than frustrate judicial economy. The Settling Defendant has devoted significant time and resources to negotiating a good faith settlement to resolve its liability to the Commonwealth. Delay in entry of the proposed Consent Judgment would be prejudicial and pose the danger of a hardship to the Settling Defendant, because the Settling Defendant would have to spend additional time and resources participating in this case, and, during the pendency of the case, it will leave the appearance of an open complaint against the Settling Defendant for environmental violations, which may adversely affect their business. *See Kobico*, 44 Mass. App. Ct. 103, 104, n.2. Moreover, the Settling Defendant has agreed in the Consent Judgment not to challenge or appeal its entry. The final resolution of these claims


against the Settling Defendant thus would promote judicial economy and simplify and expedite the trial of the pending claims against the Non-Settling Defendants. Additionally, this Court has endorsed a similar motion between the Commonwealth and Defendant TRC Companies, Inc. ("TRC") and entered a Consent Judgment between the Commonwealth and TRC for similar reasons. Assented to Joint Mot. for Separate and Final J. Pursuant to M.R.C.P. 54(b) as to TRC Companies, Inc., Docket no. 3, December 17, 2024. The Court accordingly should exercise its discretion to find no just reason for delay and enter separate and final judgment as to the Settling Defendant under Rule 54(b). *Cf. Finnegan v. Baker*, 88 Mass. App. Ct. 35, 40 (2015) (affirming finding of no just reason for delay where litigation uncertainty would harm defendants and no piecemeal appeals would result).

Because all four elements of a valid Rule 54(b) certification are present here, the Commonwealth and the Settling Defendant respectfully request that the Court expressly find that there is no just reason to delay and therefore enter and certify the Final Judgment as to the Settling Defendant pursuant to Rule 54(b) in the form attached hereto.

Respectfully Submitted,

FOR THE COMMONWEALTH OF
MASSACHUSETTS

ANDREA JOY CAMPBELL
ATTORNEY GENERAL



John S. Craig, BBO# 707067

Louis Dundin, BBO# 660359

Assistant Attorneys General

Office of the Attorney General

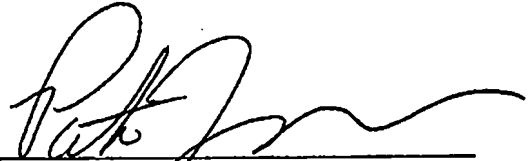
One Ashburton Place, 18th Floor

Boston, MA 02108

John.Craig@mass.gov

Dated: 1/22/2025

For JOHN MORIARTY AND ASSOCIATES,
INC:



Patrick T. Ryan, Esq., BBO# 688585

Peter G. Hermes, Esq., BBO# 231840

Clyde & Co US LLP

265 Franklin Street, Suite 802

Boston, MA 02110

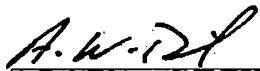
Patrick.Ryan@clydeco.us

Peter.Hermes@clydeco.us

Dated: 1/22/25

The Defendants, JDC Demo & Abatement LLC and JDC Demolition Company, Inc., hereby assent to the foregoing motion.

Counsel for JDC Demo & Abatement LLC, and JDC Demolition Company, Inc.



Andrew E. Daniels, Esq.
General Counsel
JDC Demo & Abatement LLC
JDC Demolition Company, Inc.
338 Howard St.
Brockton, MA 02302
adaniels@newroadsenviro.com
adaniels@jcdemoinc.com

Dated: 1.21.25

CERTIFICATE OF SERVICE

I, John S. Craig, certify that on January ~~12~~, 2025, I served the foregoing document on each of the following via electronic mail and first class mail:

Counsel for JDC Demo & Abatement
LLC, and JDC Demolition Company, Inc.

Andrew E. Daniels, Esq.
General Counsel
JDC Demo & Abatement LLC
JDC Demolition Company, Inc.
338 Howard St.
Brockton, MA 02302
adaniels@newroadsenviro.com
adaniels@jcdemoinc.com

/s/ John S. Craig
John S. Craig

ATTACHMENT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION No. 2484CV03006

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

JDC DEMO & ABATEMENT LLC, JDC
DEMOLITION COMPANY, INC. JOHN
MORIARTY AND ASSOCIATES, INC., and
TRC COMPANIES, INC.

Defendant(s).

**CONSENT JUDGMENT
BETWEEN THE
COMMONWEALTH OF
MASSACHUSETTS AND JOHN
MORIARTY AND ASSOCIATES,
INC.**

I. INTRODUCTION

WHEREAS, Plaintiff, the Commonwealth of Massachusetts (the "Commonwealth"), acting by and through the Attorney General and the Massachusetts Department of Environmental Protection (the "Department"), has filed a Complaint in this action alleging that Defendant, John Moriarty and Associates, Inc. ("Moriarty"), has violated the Massachusetts Clean Air Act, G.L. c. 111, §§ 142A–O (the "Air Act"), and its implementing regulations, 310 C.M.R. §§ 7.00–.72 (the "Asbestos Regulations"), during the partial demolition of the twenty-two story former Edward J. Sullivan Courthouse ("Sullivan Courthouse") at 40 Thorndike Street, Cambridge, Massachusetts (the "Site");

WHEREAS, the Complaint alleges Moriarty served as the general contractor for the demolition and reconstruction work on the Sullivan Courthouse;

WHEREAS, the Complaint alleges that Moriarty caused, suffered, or allowed illegal asbestos abatement activity where workers: failed to follow proper handling practices including,

but not limited to, failing to adequately wet asbestos containing material ("ACM"), co-mingling asbestos containing waste material with general demolition debris, and failing to properly secure ACM for safe storage, transport, and disposal; failed to ensure ventilation systems functioned properly with clean filters at all times during abatement work; failed to ensure that ventilation systems discharged exhaust air outside of the building; caused or allowed breaches in containment; and caused or allowed dry, uncontained ACM to be exposed to the ambient air;

WHEREAS, the Complaint further alleges Moriarty's actions at the Site caused a condition of air pollution and potentially risked the health and safety of members of the public, workers at the Site, and the environment in violation of the Air Act and the Asbestos Regulations;

WHEREAS, the Commonwealth's Complaint seeks injunctive relief and the assessment of civil penalties;

WHEREAS, Moriarty denies all claims and relief requested in the Commonwealth's Complaint;

WHEREAS, the Commonwealth and Moriarty (collectively, "the Parties") have reached an agreement to resolve the Commonwealth's claims against Moriarty, including an agreement on the amount of a civil penalty, and the Parties understand and agree that the terms of this Consent Judgment and any payments hereunder are intended to compromise disputed claims;

WHEREAS, this Consent Judgment is for settlement purposes only and is to be construed solely as a reflection of the Parties' desire to facilitate a resolution of the Commonwealth's Complaint against Moriarty;

WHEREAS, Moriarty expressly denies that it has violated any duty or breached any obligation under the Air Act, Asbestos Regulations or any other statute, law, rule or regulation,

or otherwise engaged in any wrongdoing with respect to the Sullivan Courthouse of the Site, and Moriarty denies any and all liability related thereto;

WHEREAS, neither this Consent Judgment nor any actions undertaken by the Parties in the negotiation or execution of this Consent Judgment will constitute, or be construed as, evidence or an admission of any liability or wrongdoing or a recognition of the validity of any claim by the Commonwealth or the Department, all of which Moriarty expressly denies;

WHEREAS, the Commonwealth and Moriarty consent to the entry of this Consent Judgment without a trial on any issues and agree that the entry of this Consent Judgment is an appropriate means to resolve this case without an admission of wrongdoing or liability, which are expressly denied by Moriarty; and

WHEREAS, the Parties agree that the settlement of this matter has been negotiated in good faith and at arm's length, that implementation of this Consent Judgment will avoid prolonged and complicated litigation between the Parties, and that this Consent Judgment is consistent with the goals of the Air Act and in the public interest.

NOW, THEREFORE, based on the Joint Motion of the Parties for Entry of this Consent Judgment, and before taking any testimony and without the adjudication of any issue of fact or law except as provided in Section II (Jurisdiction and Venue), it is **ADJUDGED, ORDERED, AND DECREED**, as follows:

II. JURISDICTION AND VENUE

1. The Superior Court has jurisdiction over the subject matter of this action and over the parties to it pursuant to G.L. c. 111, § 142A, and G.L. c. 214, §§ 1 and 3. Venue is proper in Suffolk County pursuant to G.L. c. 223, § 5.

2. The Complaint alleges facts, which, if proven, would constitute good and sufficient grounds for the relief set forth in this Consent Judgment.

III. PARTIES BOUND

3. This Consent Judgment shall constitute a binding agreement between the Parties, and Moriarty consents to its entry as a final judgment by the Court and waives all rights of appeal upon its entry on the docket. If the Superior Court declines to enter this Consent Judgment on any ground except one related to form, this Consent Judgment is voidable at the option of either Party within fourteen (14) days of the Court's decision. If, on the other hand, the Superior Court determines that substantive modifications to this Consent Judgment are necessary prior to the Court's entry of it, the Parties shall enter into good faith negotiations to discuss the modifications, and this Consent Judgment shall be void unless the Commonwealth and Moriarty agree otherwise in writing within fourteen (14) days of the Court's decision.

4. The provisions of this Consent Judgment shall apply to and bind Moriarty, and any person or entity acting by, for, or through Moriarty, including managers, directors, officers, supervisors, employees, agents, servants, attorneys-in-fact, successors and assigns, and those persons in active concert or participation with Moriarty who receive notice of this Consent Judgment.

5. Moriarty shall not violate this Consent Judgment, and Moriarty shall not allow its officers, directors, agents, servants, attorneys-in-fact, employees, successors or, assigns, to violate this Consent Judgment. In any action to enforce this Consent Judgment, Moriarty shall not raise as a defense the failure by any of its managers, directors, officers, supervisors, employees, or agents, to take any actions necessary to comply with the provisions of this Consent Judgment.

6. In addition to any relief specifically provided in this Consent Judgment, Moriarty understands and agrees that violations of this Consent Judgment may be punishable by contempt.

IV. PAYMENT OF CIVIL PENALTIES

7. Moriarty shall pay to the Commonwealth a civil penalty pursuant to the Air Act of two hundred twenty-five thousand dollars (\$225,000.00) **within thirty (30) days of entry of this Consent Judgment.**

8. One hundred twelve thousand, five hundred dollars (\$112,500.00) of the initial payment made pursuant to this Paragraph shall be deposited into the Environmental Justice Fund, Section 58 of Chapter 140 of the Acts of 2024, to be used consistent with the purposes of the Fund, to be administered and distributed by the Environmental Protection Division of the Attorney General's Office.

9. Moriarty shall make the above-described civil penalty payments by Electronic Funds Transfer ("EFT") to the Commonwealth of Massachusetts in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of the Attorney General
ABA#: 011075150
ACCOUNT#: 00088882022
SANTANDER BANK
75 STATE STREET
BOSTON, MA 02109
TIN: 04002284

and shall include the following in the payment information: "EPD, *Commonwealth v. NewRoads Environmental Services, LLC et al.*" Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of the payment, Moriarty shall send notice of payment by electronic mail, as set forth below in Section IX

(Notices), and shall include the Payer's Taxpayer Identification Numbers, the payment information described in this Paragraph, and the amount of the payment.

VI. INTEREST AND COLLECTIONS

10. If any payment required pursuant to this Consent Judgment is late or not made, Moriarty shall pay interest on any overdue amount for the period of such nonpayment and at the rate of twelve percent (12%) pursuant to G.L. c. 231, § 6B, computed monthly, and shall pay all expenses associated with collection by the Commonwealth of the unpaid amounts and interest for any period of nonpayment after the payment obligation becomes due, including reasonable attorneys' fees.

VII. EFFECT OF CONSENT JUDGMENT

11. Upon compliance with the requirements of this Consent Judgment, (a) this Consent Judgment shall resolve Moriarty's alleged liability for the specific legal claims alleged against it in the Complaint, and (b) the Commonwealth shall release Moriarty from liability for the specific legal claims alleged against Moriarty in the Complaint.

12. Nothing in this Consent Judgment, or any permit or approval issued by the Department: (a) shall bar any action by the Commonwealth on any legal claim not specifically pleaded in the Complaint or for any violations not revealed to the Commonwealth; (b) shall be deemed to excuse noncompliance by Moriarty or any of the persons or entities otherwise bound by this Consent Judgment with any law or regulation; or (c) shall preclude a separate or ancillary action by the Commonwealth to enforce the terms of this Consent Judgment, or any permit or other approval issued by the Department. The Commonwealth expressly reserves all claims for injunctive relief for violations of all of the statutes and regulations referred to in this Consent

Judgment, whether related to the specific legal claims resolved by this Consent Judgment or otherwise.

13. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Judgment.

VIII. MISCELLANEOUS

14. Moriarty understands and agrees that, pursuant to 11 U.S.C. § 523(a)(7), the civil penalty and any other costs or sums that Moriarty may be required to pay under this Consent Judgment are not subject to discharge in any bankruptcy.

15. Moriarty shall pay all expenses, including reasonable attorneys' fees and costs, incurred by the Commonwealth in the enforcement of this Consent Judgment.

16. Moriarty waives entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

17. The titles in this Consent Judgment have no independent legal significance and are used merely for the convenience of the Parties.

18. Massachusetts law shall govern the interpretation and enforcement of this Consent Judgment.

19. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business the next business day.

IX. NOTICES

20. Unless otherwise specified in this Consent Judgment, notices and submissions required by this Judgment shall be made in writing by first class mail to the following addresses:

For the Attorney General's Office and the Commonwealth:

John S. Craig
Louis Dundin
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
John.Craig@mass.gov

For the Department:

Colleen McConnell
Senior Regional Counsel
Northeast Regional Office
Massachusetts Department of Environmental Protection
150 Presidential Way, Suite 300
Woburn, MA 01801
Colleen.McConnell@mass.gov

Grady Dante
Asbestos Section Chief
Northeast Regional Office
Massachusetts Department of Environmental Protection
150 Presidential Way, Suite 300
Woburn, MA 01801
Grady.Dante@mass.gov

For John Moriarty and Associates, Inc.:

Patrick T. Ryan, Esq.
Peter G. Hermes, Esq.
Clyde & Co US LLP
265 Franklin Street, Suite 802
Boston, MA 02110
Patrick.Ryan@clydeco.us
Peter.Hermes@clydeco.us

or, to such other place or to the attention of such other individual as a Party may from time to time designate by written notice to the other Party to this Consent Judgment.

X. INTEGRATION

21. Except as expressly set forth in this Consent Judgment, this Consent Judgment sets forth all of the obligations of the Parties and represents the complete and exclusive statement of the Parties with respect to the terms of the settlement agreement embodied by this Consent Judgment; any other representations, communications or agreements by or between the Parties shall have no force and effect.

XI. MODIFICATION

22. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Judgment, it shall be effective only by written approval of the Parties and the approval of the Court. The Commonwealth's decision to extend a deadline in this Consent Judgment shall not constitute a material change for purposes of this Paragraph.

XII. AUTHORITY OF SIGNATORY

23. The person signing this Consent Judgment on behalf of Moriarty acknowledge:
(a) that they have personally read and understand each of the numbered Paragraphs of this Consent Judgment; (b) that, to the extent necessary, Moriarty's managers, directors, officers, and shareholders have consented to Moriarty entering into this Consent Judgment and to its entry as a Final Judgment; and (c) that they are authorized to sign and bind Moriarty to the terms of this Consent Judgment.

XIII. RETENTION OF JURISDICTION

24. The Court shall retain jurisdiction over this case for purposes of resolving disputes that arise under this Consent Judgment, entering orders modifying this Consent Judgment, or effectuating or enforcing compliance with the terms of this Consent Judgment and

any permits, approvals, or directives issued by the Department pursuant to the terms of this Consent Judgment.

XIV. FINAL JUDGMENT

25. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a Final Judgment of the Court.

IT IS SO ORDERED. JUDGMENT is hereby entered in accordance with the foregoing.

By the Court:

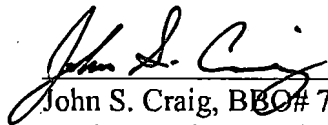
JUSTICE, SUPERIOR COURT

Date

The Undersigned Parties enter into this Consent Judgment in the matter of
Commonwealth v. NewRoads Environmental Services, LLC, et al. (Suffolk Superior Court).

FOR THE COMMONWEALTH OF
MASSACHUSETTS

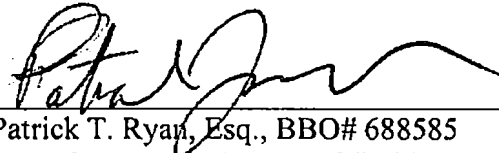
ANDREA JOY CAMPBELL
ATTORNEY GENERAL



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Assistant Attorneys General
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
John.Craig@mass.gov

Dated: 1/22/2025

For JOHN MORIARTY AND
ASSOCIATES, INC.:



Patrick T. Ryan, Esq., BBO# 688585
Peter G. Hermes, Esq., BBO# 231840
Clyde & Co US LLP
265 Franklin Street, Suite 802
Boston, MA 02110
Patrick.Ryan@clydeco.us
Peter.Hermes@clydeco.us

Dated: 1/15/25