

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

LGA3 CORP.,¹

Reorganized Debtor.

Chapter 11

Case No. 20-11456 (LSS)

SETTLEMENT AGREEMENT

WHEREAS, on June 1, 2020, Syracuse China Company² and certain of its affiliates (the “Affiliated Debtors” and together with Syracuse China, the “Debtors”) each filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing chapter 11 cases which were jointly administered as *In re: Libbey Glass Inc. et al.*, Case No. 20-11439 (LSS) (collectively, the “Chapter 11 Cases”);

WHEREAS, on December 29, 2020, the Bankruptcy Court entered the *Final Decree (I) Closing the Closing Cases and (II) Granting Related Relief* (Docket No. 715)

¹ The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is LGA3 Corp. (1505). The Reorganized Debtor’s mailing address is P.O. Box 10060, Toledo, Ohio 43699-0060. References to docket numbers contained herein are references to the chapter 11 docket in Libbey Glass Inc.’s chapter 11 case, Case No. 20-11439 (LSS).

² Following the effective date of the Plan (as defined herein), Syracuse China Company was dissolved and Syracuse China LLC (“Syracuse China”) was formed as the successor of Syracuse China Company. As such, this Settlement Agreement shall apply to Syracuse China LLC and its successors and assigns.

(the “Case Closing Order”), closing each of the Chapter 11 Cases other than the Chapter 11 Case of LGA3 Corp.;³

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency (“EPA”), filed a proof of claim (Claim No. 733) (the “EPA Proof of Claim”), contending that Syracuse China is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601–9675, for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with two “operable units” (“OUs”), of the Onondaga Lake Superfund Site, located in Syracuse, Onondaga County, New York, which are referred to as the Lower Ley Creek OU and the Ley Creek Deferred Media OU (collectively, the “Ley Creek OUs”);

WHEREAS, EPA is unaware, as of the date of execution of this Settlement Agreement, of any information that any affiliated debtor owned or operated or controlled Syracuse China;

WHEREAS, the EPA Proof of Claim does not assert claims or liabilities against any of the Affiliated Debtors;

WHEREAS, EPA is not aware, as of the date of execution of this Settlement Agreement, of any claims or causes of action against the Affiliated Debtors for the Ley Creek OUs or the Onondaga Lake Superfund Site;

³ Entry of the Case Closing Order was without prejudice to, among other things, the Debtors’ rights to object to claims filed against any Debtor. *See* Case Closing Order ¶ 6.

WHEREAS, the EPA Proof of Claim asserts the aforementioned response cost liability as a general unsecured claim;

WHEREAS, the EPA Proof of Claim sets forth the United States' position that Syracuse China's obligation to comply with work obligations, including but not limited to the Lower Ley Creek OU Remedial Design Order and other cleanup obligations, under court orders, administrative orders, environmental statutes, regulations, licenses, and permits is not dischargeable pursuant to Section 1141 of the Bankruptcy Code;

WHEREAS, Syracuse China disagrees with the United States' contentions and, but for this agreement (the "Settlement Agreement"), would dispute, in whole or in part, the EPA Proof of Claim;

WHEREAS, Syracuse China and EPA wish to resolve their differences with respect to the EPA Proof of Claim as provided herein;

WHEREAS, on October 20, 2020, the Bankruptcy Court entered an order (Docket No. 598) (the "Confirmation Order") confirming the *First Amended Joint Plan of Reorganization for Libbey Glass Inc. and its Affiliate Debtors under Chapter 11 of the Bankruptcy Code* (the "Plan") attached to the Confirmation Order as Exhibit A thereto;

WHEREAS, on November 13, 2020, the Plan was substantially consummated and the effective date of the Plan occurred;

WHEREAS, pursuant to the Plan, the Debtors have reserved \$900,000 as a General Unsecured Recovery Cash Pool to be distributed on a pro rata basis to holders of Allowed General Unsecured Claims (each as defined in the Plan) in accordance with the Plan, and it is not anticipated that this cash will be converted to any other type of asset;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).
2. With respect to the Ley Creek OUs, the United States on behalf of EPA shall have an Allowed General Unsecured Claim in the amount of \$6,616,976 (the “EPA Allowed Claim”), to be allocated between the Ley Creek OUs in proportion to the anticipated remedial action costs as alleged in Paragraphs 11 and 12 of the EPA Proof of Claim.
3. The EPA Allowed Claim shall receive the same treatment under the Plan, without discrimination, as all other Allowed General Unsecured Claims, with all attendant rights provided by the Plan, and shall not be entitled to any priority in distribution over other Allowed General Unsecured Claims. In no event shall the EPA Allowed Claim be subordinated to any other Allowed General Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, or 726(a)(4) of the Bankruptcy Code.
4. EPA may, in its sole discretion, deposit any portion of any cash distributions it receives pursuant to this Settlement Agreement, and any portion of the proceeds of any

non-cash distributions it receives pursuant to this Settlement Agreement, into the Lower Ley Creek Special Account (024Q25) and Ley Creek Deferred Media Special Account (024Q09) established by EPA for the Ley Creek OUs within the Hazardous Substance Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the Ley Creek OUs or to be transferred to the Hazardous Substance Superfund.

5. Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) pursuant to this Settlement Agreement for the EPA Allowed Claim, and not the total amount of the EPA Allowed Claim, shall be credited as a recovery by EPA for the Ley Creek OUs, which credit shall reduce the liability of non-settling potentially responsible parties for the Ley Creek OUs by the amount of the credit.

6. Cash distributions to the United States pursuant to this Settlement Agreement shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System (“CDCS”) number, to be provided to the Debtors by the Financial Litigation Unit of the United States Attorney’s Office for the District of Delaware.

Non-cash distributions to the United States shall be made to:

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive
MS: Norwood
Cincinnati, Ohio 45268

At the time of any cash or non-cash distribution pursuant to this Settlement Agreement, the Debtors shall transmit written confirmation of such distribution to the

United States at the addresses specified below and email confirmation of such distribution to the EPA Cincinnati Finance Office at cinwd_acctsreceivable@epa.gov, with a reference to Bankruptcy Case Number 20-11456, the CDCS number, and Site/Spill ID Number 024Q:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Ref. DOJ File No. 90-11-3-08348/6

Margo B. Ludmer
Assistant Regional Counsel
New York / Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 2
New York, NY 10007

7. Notwithstanding any other provision of this Settlement Agreement, and except as provided under applicable non-bankruptcy law, there shall be no restrictions on the ability and right of EPA to sell its right to all or a portion of any distributions under the Plan to one or more third parties, or to transfer or sell to one or more third parties all or a portion of the EPA Allowed Claim.

8. In consideration of the distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 9–11, EPA covenants not to file a civil action or take administrative action against Syracuse China pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Ley Creek OUs.

9. The covenant set forth in Paragraph 8 extends only to Syracuse China and does not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant for any person or entity other than Syracuse China and the United States. EPA and Syracuse China expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, that they may have against any predecessors of Syracuse China or any other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the Ley Creek OUs. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)–(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement.

10. The covenant set forth in Paragraph 8 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against Syracuse China with respect to all matters other than those set forth in Paragraph 8, provided however, nothing in this Settlement Agreement modifies any term or provision of the Plan or Confirmation Order. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of this Settlement Agreement. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against Syracuse China with respect to the Ley Creek OUs for liability under federal or state law for acts by Syracuse China or its successors or assigns that occur after the date of filing of this Settlement Agreement.

11. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, provided, however, that nothing in this sentence affects the covenant set forth in Paragraph 8. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation or to excuse Syracuse China or its successors or assigns (if any) from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

12. Syracuse China covenants not to sue and agrees not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Ley Creek OUs, including, but not limited to the following: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; or (iii) any claims arising out of response activities at the Ley Creek OUs. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

13. Notwithstanding any other provision of this Settlement Agreement, Syracuse China reserves, and this Settlement Agreement is without prejudice to, claims against the

United States in the event any claim is asserted by the United States against Syracuse China pursuant to any of the reservations set forth in Paragraph 10, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that Syracuse China's claims arises from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

14. The parties hereto agree, and by entering this Settlement Agreement the Bankruptcy Court finds, that this Settlement Agreement constitutes a judicially-approved settlement pursuant to which Syracuse China has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Ley Creek OUs by the United States or any potentially responsible parties, provided, however, that, if EPA exercises rights under the reservations in Paragraph 10, other than for failure to meet a requirement of this Settlement Agreement, the "matters addressed" in this Settlement Agreement shall no longer include those response costs or response actions that are within the scope of the exercised reservation. "Effective Date" means the date on which this Settlement Agreement is approved by the Bankruptcy Court.

15. This Settlement Agreement constitutes a judicially-approved settlement pursuant to which Syracuse China has, as of the Effective Date, resolved its liability to the

United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

16. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. Syracuse China and the United States shall promptly seek approval of this Settlement Agreement under the applicable provisions of the Bankruptcy Rules and the Bankruptcy Code, subject to Paragraphs 17 and 18 of this Settlement Agreement.

17. This Settlement Agreement shall be filed with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations that indicate the Settlement Agreement is not in the public interest.

18. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 17, or (b) the Settlement Agreement is not approved by the Bankruptcy Court, the following shall apply: (i) this Settlement Agreement shall be null and void, and the parties hereto shall not be bound under the Settlement Agreement or under any documents executed in connection herewith; (ii) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (iii) this Settlement Agreement and any

documents prepared in connection herewith shall have no residual or probative effect or value.

19. Prime Clerk LLC, the Debtors' claims and noticing agent, shall be authorized to update the official claims register maintained for the Debtors consistent with the terms of this Settlement Agreement.

20. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein.

21. This Settlement Agreement may not be amended except by a writing signed by all the parties and approved by the Bankruptcy Court.

22. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

23. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the District of Delaware) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, or relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

The undersigned party hereby enters into this Settlement Agreement in *In re LGA3 Corp.*
Case No. 20-11456 (Bankr. D. Del).

FOR THE UNITED STATES OF AMERICA:

Date: 9/28/2021 By: *Nathaniel Douglas*
NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 9/28/2021 By: *Natalie Harrison*
NATALIE G. HARRISON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

The undersigned party hereby enters into this Settlement Agreement in *In re LGA3 Corp.*
Case No. 20-11456 (Bankr. D. Del).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 10/7/2021

By: Evangelista, Pat
PAT EVANGELISTA
Director
Superfund and Emergency Management
Division
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

Digitally signed by
Evangelista, Pat
Date: 2021.10.07 16:47:28
-04'00'

Date: 09/30/2021

By: Margo Ludmer
MARGO B. LUDMER
Assistant Regional Counsel
New York / Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

The undersigned party hereby enters into this Settlement Agreement in *In re LGA3 Corp.*
Case No. 20-11456 (Bankr. D. Del.)

FOR THE DEBTORS, AND ON BEHALF OF SYRACUSE CHINA LLC:

Date: 09-13-2021 By: Jonnie Hodges
JONNIE HODGES
Senior Counsel and Secretary
Libbey Glass LLC