

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

*In re:* ) Chapter 11  
)  
TOUCH AMERICA HOLDINGS, INC., ) Case No. 03-11915 (KJC)  
*et al.,* ) (Substantively Consolidated)  
)  
Debtors. )  
\_\_\_\_\_ )

**STIPULATION OF SETTLEMENT BETWEEN THE PLAN TRUSTEE OF THE  
TOUCH AMERICA HOLDINGS, INC. PLAN TRUST AND THE MATTSON  
CLAIMANTS**

This Stipulation of Settlement (the “Stipulation of Settlement”) is entered into between Brent C. Williams, as plan trustee (the “Plan Trustee”) for the liquidating trust (the “Plan Trust”) of Touch America Holdings, Inc. et al. (the “Debtors”) and Rebecca E. Mattson, Sliters, North Flathead Lake Yacht Club, J. Michael Dockstader, Ray J. Habel, Greg R. Habel, William G. Bowd, Paul Sullivan, Mary Sullivan, Randa J. McAlpin, Neil R. McAlpin, Pete C. Woll, L. Harry Woll, Lloyd Foster, George W. Ingham II, Benjamin W. Louden, Kenneth D. Louden, Michael O. Speckert, Steven Speckert, Susie Speckert, Hector Speckert, and the class they represent (the “Mattson Claimants”).

**PROCEDURAL BACKGROUND**

A. The Mattson Claimants are named plaintiffs and class members in a lawsuit captioned *Mattson, et al., v. Montana Power Company, PP&L Montana, Touch America Holdings, Inc., NorthWestern Energy Company, and NorthWestern Corporation*, No. DV-00-548(A) (Montana 11th Judicial District Court, Flathead County) (the “Montana State Court Case”). They filed their lawsuit on November 8, 1999, alleging that defendant Montana Power Company (“Montana Power”) and its successors, including Touch American Holdings, Inc. (“Touch America”), owned, operated and managed Kerr Dam, a hydroelectric dam located on Flathead Lake in Flathead and Lake Counties, Montana, in a manner that altered the natural

water level of the lake and resulted in continuing erosion, property damage, and loss of shoreline on lakefront and riverfront properties owned by the Mattson Claimants.

B. In March 2001, the District Court in Flathead County, Montana certified the Montana State Court Case to proceed as a class action as to all defendants under Montana law and the Montana Rules of Civil Procedure. The class consists of “[a]ll persons and entities (other than defendants and the Confederated Salish and Kootenai Tribe of the Flathead Reservation, Montana) that own real property with lake frontage on the shoreline of Flathead Lake in Flathead County and Lake County, Montana, and/or real property which contains a bank of the Flathead River located in Flathead County, Montana.” **Exhibit A**, Opinion and Order of Judge Lympus, March 26, 2001.

C. On April 25, 2007, the Montana State Court granted summary judgment to all defendants in the Montana State Court Case, and the Mattson Claimants appealed to the Montana Supreme Court. That appeal is currently pending and has been set for oral argument on September 24, 2008

D. On June 19, 2003, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). On August 17, 2004 the Debtors filed their Amended Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code with Respect to the Debtors’ Chapter 11 Plan of Liquidation and the Debtors’ Amended Liquidating Chapter 11 Plan (the “Plan”). On October 6, 2004, the Court entered an Order confirming the Plan. The Plan became effective on October 19, 2004 (the “Plan Effective Date”).

E. Pursuant to the Plan, as of the Plan Effective Date, the Plan Trust was established. All of the Debtors’ assets, causes of action, claims, rights and interests succeeded, transferred and vested in the Plan Trust.

F. The Mattson Claimants filed a classwide proof of claim (the “Mattson Claim”) in the Chapter 11 Case on November 10, 2003. **Exhibit B**. The Mattson Claimants asserted an unliquidated claim against Touch America for damages allegedly incurred by the Mattson

Claimants as the result of Montana Power's operation of Kerr Dam. The Mattson Claimants asserted that Touch America is liable for these damages as successors to Montana Power under the Asset Purchase Agreement (the "Generation Assets APA") dated December 19, 1997.

G. Touch America disputes that it is liable for the Mattson Claimants' damages because (i) the Mattson Claim is without merit as determined by the Montana State Court's finding that the Mattson Claimants are not entitled to judgment as a matter of law and granting summary judgment in favor of Touch America and (ii) Touch America is not a successor to Montana Power for the purposes of Montana Power's operation and management of the Kerr Dam. Touch America objected (the "Claim Objection") to the Mattson Claim on August 22, 2007, and the matter was fully briefed but has not yet been ruled upon by the Bankruptcy Court.

H. The Plan Trustee and the Mattson Claimants, recognizing the risks of continued litigation and desiring to resolve this matter without further expense, now seek a full and final settlement and resolution of all past and present claims, controversies and disputes between and among themselves, including, but not limited to, those arising out of the Montana State Court Case and the Chapter 11 Case.

### **TERMS OF THE SETTLEMENT**

The Plan Trustee and the Mattson Claimants, for and in consideration of the mutual terms and conditions contained herein, do stipulate and agree as follows:

1. Allowance of Mattson Claim. Upon the effective date of this Stipulation of Settlement, defined below, the Mattson Claim shall be deemed to be reduced and allowed as a general unsecured claim in the amount of \$350,000 (the "Allowed Mattson Claim"). The amount of the Mattson Claim in excess of \$350,000 shall be disallowed and expunged with prejudice without the need for any further filing or notice by or to the Mattson Claimants, and the claims agent shall amend the claims register in the Bankruptcy Court to reflect that the Mattson Claim has been reduced and allowed in accordance with this Stipulation of Settlement. The reduction of the Mattson Claim is without prejudice to any attempt by the Mattson Claimants to pursue their rights in the Montana State Court Case or any other forum in order to attempt to

recover against the Insurance Policies (as defined below), subject to the Mattson Claimants' covenant not to execute as against the Plan Trust, the Plan Trustee and the Debtors.

2. Insurance Policies. The Mattson Claimants shall not be entitled to assert claims against any policies of insurance of the Plan Trustee, the Plan Trust or the Debtors other than the following insurance policies: (i) Montana Power Company Excess Liability Policy with AEGIS for the period 9/1/94-9/1/95; (ii) Montana Power Company Excess Liability Policy with AEGIS for the period 9/1/95-9/1/96; (iii) Montana Power Company Excess Liability Policy with AEGIS for the period 6/1/96-9/1/97; (iv) Montana Power Commercial Excess Liability Policy with National Union Fire Insurance Co. of Pittsburgh, PA for the period 6/1/97-9/1/98; and (v) Montana Power Company Commercial Umbrella Policy with National Union Fire Insurance Co. of Pittsburgh, PA for the period 9/1/98-9/1/99 (the "Insurance Policies"). The Mattson Claimants' rights under the Insurance Policies are as follows:

a. The Plan Trustee hereby unconditionally and without recourse transfers and assigns all of his and/or the Debtors' rights, title and interest they may have in and to the Insurance Policies to the Mattson Claimants to the extent that such policies provide coverage or distributions as recovery for or in connection with allegations made by the Mattson Claimants in the Montana State Court Case and the Mattson Claim (the "Assigned Rights").

b. The Plan Trustee hereby unconditionally and without recourse transfers all of his and/or the Debtors' rights, title and interest in and to the Insurance Policies, if any, to the Mattson Claimants to the extent that the Mattson Claimants have a right to recover against any or all of the insurance companies that issued any or all of the Insurance Policies for breach of contract or breach of other duty or obligation owned by such insurer under the Insurance Policies, as applicable, including, but not limited to, the duty to settle the Montana State Court Case, together with any extra contractual or tort claim arising therefrom, including, but not limited to, bad faith, breach of the implied covenant of good faith and fair dealing, fraud, or violation of any statutory or common law duty owed by the insurer to insureds under the Insurance Policies.

c. The Plan Trustee agrees that the transfer and assignment of the Assigned Rights is without recourse and warranty with respect to actual recovery on the Assigned Rights. The Mattson Claimants shall have no right to assert any claim or seek any damages, legal or equitable relief, or other recovery from the Plan Trustee, the Plan Trust or the Debtors even if the Mattson Claimants' efforts to pursue the Assigned Rights do not result in any recovery, or only a partial recovery, for the Mattson Claimants.

3. Release and Discharge. For and in consideration of the terms, conditions and undertakings stated herein, the terms and sufficiency of which are hereby agreed to and acknowledged by the Mattson Claimants, and upon the occurrence of the Agreement Effective Date, defined herein, the Mattson Claimants hereby covenant and warrant that they will not attempt to execute or collect against the Plan Trustee, the Plan Trust, the Debtors, their respective agents, representatives, affiliates, successors and assigns on any settlement, judgment, verdict, or order entered or to be entered in the Montana State Court Case or any other forum with respect to any claim, potential claim, demand, action, or cause of action, whether known or unknown, past or present or future, based on or arising from the facts and circumstances alleged or could have been alleged in the Montana State Court Case and/or the Mattson Claim.

4. Claims Objections. The Claim Objection shall be deemed withdrawn upon the effective date of this Stipulation of Settlement.

5. Mistake of Fact, Law. The Mattson Claimants acknowledge that they assume all risk that the facts or law may be otherwise than they believe, whether through ignorance, oversight, error, negligence or otherwise and which, if known, would materially affect their decision to enter into this Stipulation of Settlement.

6. No Admission or Admission Against Interest. This Stipulation of Settlement and the recitals herein, and the consideration provided hereunder, constitute a compromise of disputed claims and are not intended as admissions or admissions against interest by either the Mattson Claimants, the Plan Trust, the Plan Trustee and/or the Debtors, and nothing set forth herein constitutes an admission against interest (whether related to liability or non-liability or

any other matter in dispute). The Plan Trustee, the Plan Trust and the Debtors expressly deny and dispute any liability under the Montana State Court Case and the Mattson Claim.

7. Court Approval. The Mattson Claimants and the Plan Trustee agree that they will both seek approval of this Stipulation of Settlement from the Bankruptcy Court. In connection with obtaining approval from the Bankruptcy Court, the Mattson Claimants agree that they will (i) file a motion for preliminary approval of the settlement; (ii) cause notice to be sent to the class members; (iii) file a motion for final approval of the settlement (the “Final Approval Motion”); and (iv) undertake to distribute the settlement funds in the amounts and manner approved by the Bankruptcy Court.

8. Effective Date. The effective date of this Stipulation of Settlement (the “Agreement Effective Date”) shall be the later of the date upon which the Bankruptcy Court enters an order approving (1) this Stipulation of Settlement, and (2) the Final Approval Motion.

9. Effectiveness. This Stipulation of Settlement is expressly subject to approval by the Bankruptcy Court and shall not be binding on any party until such approval has been obtained and this Stipulation of Settlement or a separate order has been entered as an order by the Bankruptcy Court. In the event that this Stipulation of Settlement is not approved by the Bankruptcy Court, or does not become effective for any reason, the Plan Trust and the Mattson Claimants shall be returned to their status quo ante without any prejudice to their respective rights, claims, remedies or defenses.

10. Implementation. Upon occurrence of the Agreement Effective Date, the Mattson Claimants shall have the following rights and remedies under the transfer and assignment of the Assigned Rights as provided for herein:

a. To execute and collect any judgment or settlement obtained in the Montana State Court Case to the extent that judgment or settlement is covered by the applicable limits under the Insurance Policies;

b. In the event any judgment is in excess of the limits of any of the Insurance Policies, the Mattson Claimants may prosecute claims against the insurance companies as

applicable, for its or their breach of its or their duties under the Insurance Policies, as applicable, including, without limitation, the failure to secure a judgment within policy limits, good faith settlement and adjustment of claims;

c. The Plan Trustee will cooperate, upon reasonable notice and at the Mattson Claimants' expense, in the prosecution of a civil action against the insurance companies, as applicable and if appropriate, for the purpose of:

i. Compelling the applicable insurer to pay the full amount of any judgment or settlement arising from the Montana State Court Case;

ii. Recovering damages for the applicable insurer's breach of the Insurance Policies, as applicable, and its or their duties thereunder, including, but not limited to, the failure to secure a settlement within the policy limits, good faith settlement and adjustment of claims; and

iii. Providing witnesses and documents as necessary for the Mattson Claimants to prosecute claims as described above.

11. Release of Distribution. Within twenty (20) business days after the Agreement Effective Date, the Plan Trust shall release any available distribution on account of the Allowed Mattson Claim as provided for in the Bankruptcy Court's order approving the Final Approval Motion and under the Plan.

12. Further Assurances. The Plan Trustee and the Mattson Claimants shall execute all documents and take other such actions as may be necessary or appropriate to carry out the terms of this Stipulation of Settlement and the transfer of assignment of rights, title and interest in the Insurance Policies, if any, as provided for in this Stipulation of Settlement.

13. Successors and Assigns. This Stipulation of Settlement shall inure to the benefit of and be binding upon the Plan Trust, the Plan Trustee, the Debtors, the Mattson Claimants, and their respective predecessors, partners, officers, directors, shareholders, employees, principals, agents and representatives, heirs, successors, assigns, subsidiaries, affiliates and other related entities.

14. Integrated Agreement. This Stipulation of Settlement is the entire and total agreement of the Plan Trust and the Mattson Claimants, and it replaces any prior negotiations or agreements between the Plan Trust and the Mattson Claimants, whether written or oral. The Plan Trust and the Mattson Claimants acknowledge that they were represented by counsel throughout all negotiations preceding the execution of this document and that this document has been executed with the consent of and upon the advice of counsel. The language of this Stipulation of Settlement and any other document referred to herein shall be construed as a whole according to its fair meaning and not strictly for or against either the Plan Trust or the Mattson Claimants. The Plan Trust and the Mattson Claimants have jointly participated in drafting this Stipulation of Settlement and any ambiguities shall not be construed against either the Plan Trust or the Mattson Claimants.

15. Governing Law. This Stipulation of Settlement shall be interpreted, enforced and governed under the laws of the State of Delaware.

16. Actions to Enforce. If any legal action is initiated to enforce the terms of this Stipulation of Settlement, or arising from the terms of the Stipulation of Settlement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees, litigation costs and expenses from the non-prevailing party or parties, including, but not limited to, expert witness fees.

17. Counterparts. This Stipulation of Settlement may be executed in counterparts and each is hereby declared to be an original; all, however, shall constitute but one and the same Stipulation of Settlement.

18. Jurisdiction. The Bankruptcy Court shall have jurisdiction to interpret and enforce this Stipulation of Settlement and shall retain exclusive jurisdiction with respect to all matters arising from or related to it as such matters relate to the Chapter 11 Case, the Plan, and any rights or remedies related thereto, the confirmation order and any rights or remedies related thereto. The Mattson Claim and its compromise and releases granted herein, and any disputes over the reasonableness of any fees or expenses sought by the Plan Trust or Mattson Claimants with

respect to the enforcement of this Stipulation of Settlement.

19. Notice. Any notice, document or other communication to be given under the Stipulation of Settlement shall be delivered to the following recipients via U.S. Mail and email (if possible):

To the Plan Trust:

Brent C. Williams, as Plan Trustee  
c/o Chanin Capital Partners  
55 East 52nd Street  
31st Floor  
New York, New York, 10055  
T 212-758-2629  
F 212-758-2628  
[Bwilliams@chanin.com](mailto:Bwilliams@chanin.com)

with a copy to:

Todd J. Dressel, Esq.  
Winston & Strawn LLP  
101 California Street, 39<sup>th</sup> Floor  
San Francisco, California 94111  
T 415-591-1430  
F 415-591-1400  
[Tdressel@winston.com](mailto:Tdressel@winston.com)

To the Mattson Claimants:

Jamie S. Franklin  
MEITES, MULDER, MOLLICA & GLINK  
20 S. Clark Street, Suite 1500  
Chicago, IL 60603  
T 312-263-0272  
F 312-263-2942  
[jsfranklin@mmmglaw.com](mailto:jsfranklin@mmmglaw.com)

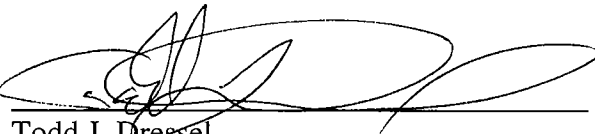
Whereas, the Plan Trust and the Mattson Claimants have executed this Stipulation of Settlement as of June \_\_, 2008:

BIFFERATO GENTILOTTI LLC

WINSTON & STRAWN LLP

---

Linda Richenderfer (#4138)  
Garvan F. McDaniel (#4167)  
800 N. King Street, Plaza Level  
Wilmington, Delaware 19801  
Phone: (302) 429-1900



---

Todd J. Dressel  
101 California Street  
San Francisco, California 94111-5802  
Telephone: (415) 591-1404  
Facsimile: (415) 591-1400

and

and

MEITES, MULDER, MOLLICA &  
GLINK

Jamie S. Franklin  
20 S. Clark St., Ste. 1500  
Chicago, IL 60603  
Phone: (312) 263-0272

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

Robert S. Brady (No. 2847)  
Maureen D. Luke (No. 3062)  
Margaret B. Whiteman (No. 4652)  
The Brandywine Building  
1000 West Street, 17<sup>th</sup> Floor  
P.O. Box 391  
Wilmington, DE 19899-0391  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

Attorneys for Claimants Rebecca Mattson,  
et al.

Attorneys for the Plan Trustee of the Touch  
America Holdings, Inc. Plan Trust