

IN THE PROBATE COURT  
PORTAGE COUNTY, OHIO

PORTAGE COUNTY  
PROBATE COURT  
FILED

AUG 18 2008

Thomas J. Carnes  
PROBATE JUDGE

JACK N. ALPERN, SUCCESSOR  
DEATH TRUSTEE OF THE TONY  
D. RUBINO 1990 REVOCABLE  
TRUST, et al.

Plaintiffs,

v.

JACK N. ALPERN, SUCCESSOR  
DEATH TRUSTEE OF THE TONY  
D. RUBINO 1990 LIVING  
TRUST and THE IRENE RUBINO  
1990 LIVING TRUST, et al.

Defendants.

Case No. 2005 CV 00023

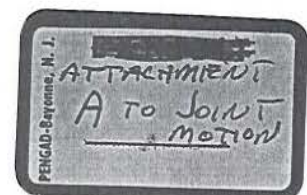
JUDGE CARNES

MAGISTRATE AYLWARD

AGREED JUDGMENT ENTRY

I. INTRODUCTION

Plaintiffs, Jack N. Alpern, Successor Death Trustee of the Tony D. Rubino 1990 Revocable Trust Agreement and Jack N. Alpern, Successor Death Trustee of the Irene Rubino 1990 Revocable Trust Agreement (hereinafter "Plaintiffs") and Defendants Jack N. Alpern, Successor Death Trustee of the Tony D. Rubino 1990 Living Trust Agreement and the Jack N. Alpern, Successor Death Trustee of the Irene Rubino 1990 Living Trust Agreement; Carol Ann Howald; Mary Anntonette Booth; Elizabeth Linda A. Rubino; Catherine A. Feigert; the State of Ohio, on behalf of the Director, Ohio Environmental Protection Agency; and Howard R. Hill (hereinafter "Defendants") hereby consent to the entry of this Agreed Judgment Entry.



NOW, THEREFORE, without trial of any issues of fact, without admission of liability, and upon the consent of the Parties hereto, it is ADJUDGED, ORDERED, and DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the undersigned parties to this action and the subject matter of the Complaint. Venue is proper in this Court. The Parties shall not challenge the Court's jurisdiction to enter and enforce this Approved Settlement Agreement.

## **III. PARTIES BOUND**

2. The provisions of this Agreed Judgment Entry shall apply to and be binding upon Plaintiffs and Defendants, their successors in interest and assigns, and others to the extent provided by Civil Rule 65(d). The undersigned representative of each party to this Agreed Judgment Entry certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of the Agreed Judgment Entry and to execute and legally bind that Party or Parties to it. This Agreed Judgment Entry is in settlement and compromise of disputed claims and nothing in this Agreed Judgment Entry is to be construed as an admission of any facts or liability.

## **IV. DEFINITIONS**

3. The terms defined in this section are used in the Agreed Judgment Entry and the Order Appointing Receiver.

4. "Person" means those entities set forth in 42 U.S.C. § 9601(21) and R.C. 1.59.

5. "Receiver" means Derron Boring, Esq. 402 South Chestnut Street, Ravenna, Ohio 44266, appointed by this Court pursuant to R.C. §2735.01(C) to administer the Rubino Trusts and settlement and sale of assets of the Rubino Trusts.

6. "Rubino Trusts" means the Tony D. Rubino Living Revocable Trust and Irene Rubino 1990 Living Revocable Trust, including the amendments thereto.

7. "Windham Alloys site" means certain real property located at 9215 State Route 303, Windham, Portage County, Ohio.

#### **V. SATISFACTION OF LAWSUIT**

8. The Parties agree that the Rubino Trusts, the Windom Alloys site, which is owned by the Rubino Trusts, and all other assets of the Rubino Trusts, including but not limited to, all leases, buildings, structures, materials, and all real and personal property and cash assets, be placed in the hands of a Receiver to be held for the Ohio Environmental Protection Agency ("Ohio EPA:") for the purpose of addressing the contamination at and migrating from the Windham Alloys site. To implement this transfer of assets to the Receiver, the Parties have agreed to the "Order Appointing Receiver," attached herein as Exhibit A.

9. The list of assets to be transferred to the Receiver is identified and attached herein as Exhibit B.

10. The Parties agree that the Receiver's appointment and implementation of the terms and conditions of the Order Appointing Receiver renders the relief sought in the First Claim and Second Claim of the Complaint no longer necessary. Thus, the Parties agree that the First Claim and Second Claim of the Complaint are, upon entry of the Agreed Judgment Entry and the Order Appointing Receiver, dismissed with prejudice.

11. Upon entry of the Agreed Judgment Entry and Order Appointiung Receiver, the Parties agree that Jack N. Alpern, Successor Trustee of the Rubino Trusts shall be dismissed and shall no longer act as Successor Trustee.



12. Upon entry of the Agreed Judgment Entry and the Order Appointing Receiver, the State of Ohio, on behalf of the Director, Ohio Environmental Protection Agency, releases any claims it may have against the Plaintiffs and the other Defendants that it may have pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C §§ 9601, *et seq* and R.C. Chapters 3734, 6111, 3767, and the common law regarding the Windom Alloys site.

#### **VI. RESERVATION OF RIGHTS**

13. Nothing in this Agreed Judgment Entry and the Order Appointing Receiver shall constitute or be construed as a release or a covenant not to sue by the State of Ohio, on behalf of the Director, Ohio Environmental Protection Agency, regarding any claim or cause of action against any Person not a signatory to this Court Approved Settlement Agreement for any liability such Person may have arising out of or relating to the Windham Alloys site.

#### **VII. MODIFICATION**

14. No modification shall be made to this Agreed Judgment Entry without the written agreement of the Parties and the order of the Court.

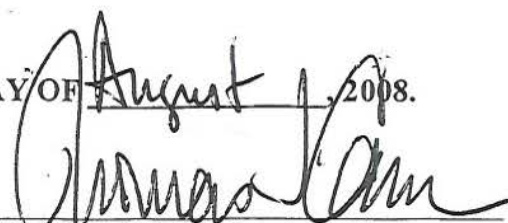
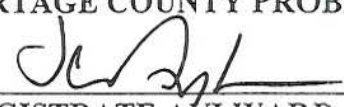
#### **VIII. RETENTION OF JURISDICTION**

15. This Court shall retain jurisdiction of this matter for the purpose of overseeing the compliance with the Agreed Judgment Entry and the Order Appointing Receiver.

#### **IX. COURT COSTS**

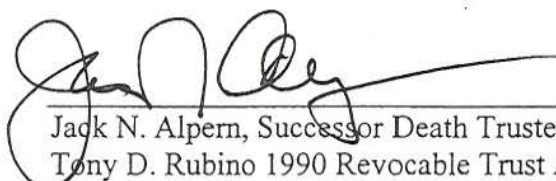
16. The Receiver shall pay the court costs of this action out of assets of the Rubino Trusts.

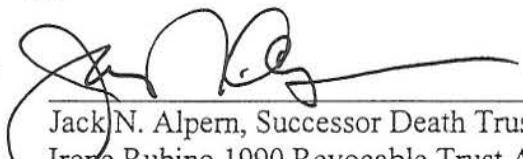
IT IS SO ORDERED THIS 18<sup>th</sup> DAY OF August, 2008.

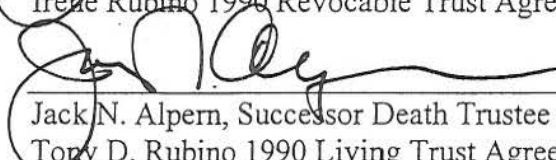
  
JUDGE CARNES  
PORTAGE COUNTY PROBATE COURT  
  
MAGISTRATE AYLWARD

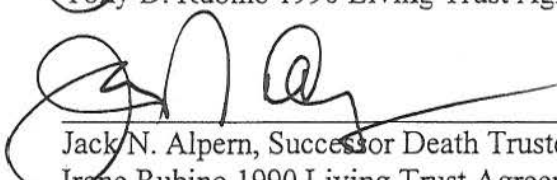
The Parties whose signatures appear below hereby consent to the Agreed Judgment Entry:

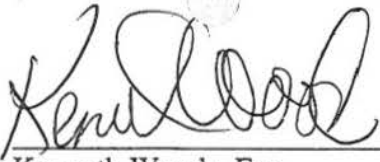
  
Gilbert L. Reiger, Esq.  
Reiger, Spencer, Carpenter & Daugherty  
410 Mahoning Ave. NW  
PO Box 1429  
Warrant, OH 44482-1429  
*Attorney for Successor Death Trustee-Alpern*

  
Jack N. Alpern, Successor Death Trustee of the  
Tony D. Rubino 1990 Revocable Trust Agreement

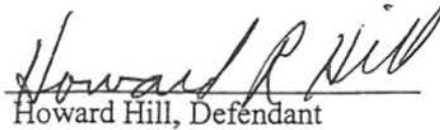
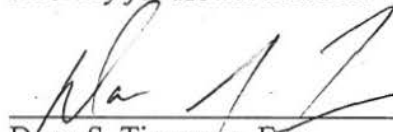
  
Jack N. Alpern, Successor Death Trustee of the  
Irene Rubino 1990 Revocable Trust Agreement

  
Jack N. Alpern, Successor Death Trustee of the  
Tony D. Rubino 1990 Living Trust Agreement

  
Jack N. Alpern, Successor Death Trustee of the  
Irene Rubino 1990 Living Trust Agreement



Kenneth Woods, Esq.  
8536 Crow Drive #110  
Macedonia, OH 44056-1900  
*Attorney for Howard R. Hill*

  
Howard Hill, Defendant

Dann S. Timmons, Esq.  
8132 Main Street  
Garrettsville, Ohio 44231  
*Attorney for Defendant, Carol Ann Howard*

Carol Ann Howard, Defendant,

Mary A. Booth  
920 Eyrie Court #103  
Raleigh, NC 27606  
*Defendant*

Catherine A. Feigert  
5109 Campbellsport Road  
Ravenna, OH 44266  
*Defendant*

Elizabeth Linda A. Rubino  
17665 Reeves Road  
Middlefield, OH 44062  
*Defendant*

Nancy H. ROGERS  
~~██████████~~ ATTORNEY GENERAL  
OF OHIO L.K.

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*Attorney for Defendant State of Ohio*

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Macedonia, OH 44056-1900  
*Attorney for Howard R. Hill*

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*Attorney for Defendant, Carol Ann Howard*

Carol Ann Howard, Defendant,

*Mary A. Booth*

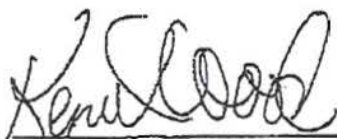
Mary A. Booth  
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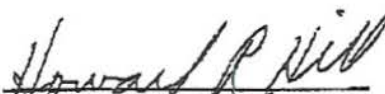
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NANCY H. ROGERS  
~~██████████~~, ATTORNEY GENERAL  
OF OHIO  
P.K.

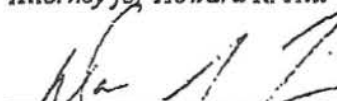
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*Attorney for Howard R. Hill*



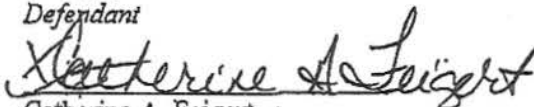
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*Attorney for Defendant, Carol Ann Howard*

Carol Ann Howard, Defendant,

Mary A. Booth  
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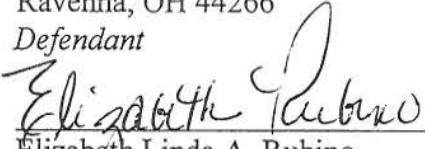
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*Attorney for Defendant State of Ohio*

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Howard Hill, Defendant

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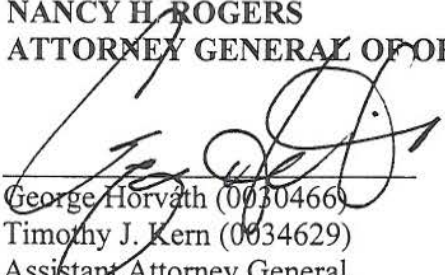
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**ATTORNEY GENERAL OF OHIO**



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Timothy J. Kern (0034629)  
Assistant Attorney General  
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Columbus, Ohio 43215-3428  
*Attorney for Defendant State of Ohio*

**IN THE PROBATE COURT  
PORTAGE COUNTY, OHIO**

**JACK N. ALPERN, SUCCESSOR  
TRUSTEE OF THE TONY D.  
RUBINO 1990 REVOCABLE TRUST  
AGREEMENT, et al.**

**Plaintiffs,**

**y.**

**JACK N. ALPERN, SUCCESSOR  
DEATH TRUSTEE OF THE TONY  
D. RUBINO 1990 LIVING TRUST, et al.**

### Defendants.

**Case No. 2005 CV 023**

**JUDGE THOMAS J. CARNES**

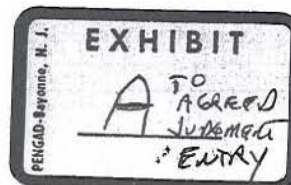
**MAGISTRATE AYLWARD**

## ORDER APPOINTING RECEIVER

This matter came on for hearing several times where Parties' discussed the environmental issues involving Windham Alloys site and the Rubino Trusts (copies of Windham Alloys site and the Rubino Trusts (attached herein as Exhibits A and B). Based upon the Motion for Appointment of a Receiver filed by Plaintiffs, Defendants (except for Catherine A. Feigert), and the State of Ohio, on behalf of the Ohio Environmental Protection Agency ("the Parties"), and finding the appointment of a receiver in the best interests of justice, the Court finds that the Motion is granted and issues this Order:

1. It is hereby ORDERED, ADJUDGED AND DECREED by the Court that the Rubino Trusts, the Windham Alloys site, which is owned by the Rubino Trusts, and all other assets of the Rubino Trusts, including but not limited to, all leases, buildings, structures,

NETPG COPY OF 1ST  
PAGE, PROPOSED ORDER  
FOR APPROVAL AND  
COAT SIGNATURE  
SUBMITTED SEPARATELY.



## George Horvath

---

**From:** Jamie Markopoulos [jmarkopoulosatvte@earthlink.net]  
**Sent:** Thursday, July 17, 2008 4:31 PM  
**To:** George Horvath  
**Subject:** Alpern/Windham

Dear George:

I have reviewed the file and below is a list of the assets in the Tony D. Rubino Trust and the Irene Rubino Trust.

### LIST OF ASSETS:

1. Land Installment Contract with Howard R. Hill and Delores J. Hill;
2. 9215 State Route 303, Windham, Parcel #40-055-00-00-019-000;
3. Lot 46 on Center Street, Windham, .690 acres, Parcel #41-046-00-00-078-000;
4. Lot 46 on Center Street, Windham, .670 acres, Parcel #41-046-00-00-078-00;
5. Lease Agreement with Powerfone, Inc. dba Nextel Communications nka Spectra Communications, Account #16467;
6. Mortgage from Jeff Howald and Carol Howald;
7. JP Morgan Chase Bank, trust checking, Account #623635687 for the Irene Rubino Trust;
8. JP Morgan Chase Bank, trust checking, Account #623635695 for the Tony D. Rubino Trust.

Attorney Gilbert L. Rieger  
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7/17/2008