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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, Plaintiffs, vs. OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. AND CLH HOLDINGS Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO.: L-009868-05 Civil Action **DEFENDANT OCCIDENTAL CHEMICAL CORPORATION'S BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE CROSS-CLAIMS**

Defendant, Occidental Chemical Corporation ("OCC"), submits this Brief in Support of its Motion for Leave to File Cross-Claims against Defendants Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF Holdings, Inc. ("YPFH"), and CLH Holdings ("CLH") (collectively the "Cross-Claim Defendants").

RELEVANT PROCEDURAL HISTORY

In December 2005, the New Jersey Department of Environmental Protection ("NJDEP") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively "Plaintiffs") brought this action against OCC and the Cross-Claim Defendants. Plaintiffs asserted claims under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq. ("Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("WPCA"), and New Jersey common law. These claims are based in part on Plaintiffs' contention that Defendants are responsible for alleged damages arising out of the purported pollution of the Passaic River and the Newark Bay Complex with various pesticides and chemicals from operations at two sites located at 80 Lister Avenue and 120 Lister Avenue in Newark, New Jersey (the "Lister Site").

On November 30, 2006, Plaintiffs filed a First Amended Complaint ("Complaint") against all Defendants. In January 2007, Maxus, Tierra, and OCC (through counsel provided by Maxus) filed Motions to Dismiss Plaintiffs' Amended Complaint For Failure to State a Claim Pursuant to R.4:6-2. These motions remain under the Court's consideration, and to the extent that Plaintiffs' claims against OCC are not dismissed, OCC intends to file an Answer and to raise all appropriate defenses at that time. Moreover, OCC's Motion to Dismiss does not seek to dismiss Plaintiffs' claim for past and future cleanup and removal costs under the Spill Act. Thus, even if OCC prevails on its Motion to Dismiss, it will still eventually be required to file an Answer with respect to that claim.

In the Complaint, Plaintiffs alleged that "[t]hrough a series of related transactions, Repsol, YPF, YPFH, CLHH, Maxus, and Tierra (the "Repsol Group") have worked to strand the environmental liabilities associated with the Newark Bay Complex in Maxus and Tierra, while

systematically stripping Maxus's and Tierra's assets and ability to satisfy these obligations." (Am. Compl. ¶ 24; *see also id.* ¶ 25-38.) In January 2007, Repsol, YPF, YPFH, and CLH filed Motions to Dismiss Plaintiffs' Amended Complaint For Lack of Personal Jurisdiction. On May 18, 2007, the Court ordered the completion of jurisdictional discovery within sixty days and the filing of a response to the motion to dismiss for lack of personal jurisdiction within forty-five days thereafter.

OCC is now prepared to assert numerous cross-claims against the Cross-Claim Defendants. A copy of the proposed Cross-Claims is attached to the Motion as Exhibit A. As discussed further below, OCC has moved this Court for leave to file its Cross-Claims at this time because the Cross-Claims bear heavily on the personal jurisdiction motions.

ARGUMENT

OCC recognizes that its request to assert its Cross-Claims now—during the pendency of its Motion to Dismiss and before it is required to file an Answer—is somewhat unusual. The typical practice in this Court and others is to file cross-claims with (or after) an Answer. However, OCC's request to assert its Cross-Claims ***prior*** to filing its Answer is consistent with R. 4:7-5(c), which states in relevant part:

> Time for Assertion. Crossclaims may be asserted by any defendant as of right within 90 days after service upon the defendant of the original complaint or after service of the complaint upon the party against whom the crossclaim is asserted, whichever is later. A crossclaim may be thereafter asserted only by leave of court, ***which shall be freely given***. A copy of the proposed crossclaim shall be annexed to the notice of motion seeking such leave.

(Emphasis added.) The Rule requires only that a party seek leave of Court to assert cross-claims after the time to assert them as of right has expired. There is no prohibition on asserting cross-claims prior to filing an Answer.

OCC makes this request because its Cross-Claims may well assist this Court in deciding the personal jurisdiction issues currently before it. As the proposed Cross-Claims attached to the Motion indicate, OCC will assert Cross-Claims against the Cross-Claim Defendants for breach of contract, common law indemnification, declaratory judgment, tortious interference with contract, fraudulent transfers, unjust enrichment, contractual indemnification, contribution under the Spill Act, and statutory contribution.[1] Although OCC's Cross-Claims adopt some of the allegations made by Plaintiffs against those Defendants, they also assert independent allegations of wrongful and tortious conduct on the part of the Cross-Claim Defendants that relate directly to obligations owed in New Jersey. (*See, e.g.*, Ex. A at ¶¶ 34, 44, 46-47, 49-51.) These claims arise, in part, out of a contractual relationship that explicitly contemplates performance in the State of New Jersey, including express defense and indemnification obligations that relate directly to the Lister Site. (*See id.* at ¶¶ 10-18.)

Because these Cross-Claims relate directly to obligations owed by the Cross-Claim Defendants to OCC and concern the New Jersey site at issue in this case, they are material to the Court's determination of its personal jurisdiction over Repsol, YPF, YPFH, and CLH. Thus, OCC has determined that judicial economy would be better served by the assertion of these Cross-Claims now—before the completion of briefing and a ruling by the Court on the personal jurisdiction issue. If OCC is permitted to present its Cross-Claims at this time, the Court would have the opportunity to decide the jurisdictional issue based on a full presentation of the specific contacts between Repsol, YPF, YPFH, and CLH and the State of New Jersey. Otherwise, the issue of personal jurisdiction would likely have to be considered in two phases—first, on the basis of the Complaint alone; and, second, at some time thereafter when OCC ultimately files its

[1] The Counts in the Cross-Claims apply to one, some, or all of the Cross-Claim Defendants.

Answer and, at that time, asserts these same Cross-Claims. Such a result would not be in the best interest of the Court or the parties.

Indeed, the Cross-Claim Defendants will suffer no prejudice by the filing of these Cross-Claims at this time for the simple reason that these Cross-Claims will be asserted sometime during the course of this litigation. If the Court grants this motion, Repsol, YPF, YPFH, and CLH will be free to move to dismiss the Cross-Claims for lack of personal jurisdiction just as they have already done with regard to the Complaint.

Because motions for leave to file cross-claims are to be freely granted, there is no unfair prejudice to the Cross-Claim Defendants for them to be filed now, and there is a clear benefit to all parties and to the Court to have all of the claims bearing on the jurisdictional issues to be presented and argued at the same time, the equities are clearly in favor of permitting OCC to assert its Cross-Claims now. Therefore, OCC respectfully requests that the Court grant its Motion for Leave to File Cross-Claims at this time.

CONCLUSION

For all of the above reasons, it is respectfully requested that the Court grant this motion and enter an Order allowing OCC to file its proposed Cross-Claims within seven (7) days of the date thereof.

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Defendant, Occidental Chemical Corporation ("OCC"), by way of cross-claims against Defendants Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF Holdings, Inc. ("YPFH"), and CLH Holdings ("CLH") (collectively, the "Cross-Claim Defendants"), alleges as follows:

INTRODUCTION

On November 30, 2006, the New Jersey Department of Environmental Protection ("NJDEP") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively "Plaintiffs") filed a First Amended Complaint ("Complaint") in the present action against OCC and the Cross-Claim Defendants. Plaintiffs allege claims arising under the New Jersey Spill Compensation and Control Act, the New Jersey Water Pollution Control Act, Public Nuisance Law, Trespass Law, and Strict Liability Law. To the extent that Plaintiffs obtain any judgment against OCC arising from any or all of the claims asserted in the Complaint, OCC is entitled to the entry of judgment against the Cross-Claim Defendants, jointly and severally, for indemnification, contribution, recovery of costs and attorneys' fees and to certain other declaratory relief. OCC's Cross-Claims wholly arise out of Plaintiffs' claims and are properly brought in this action. OCC filed motions to dismiss on many of Plaintiffs' claims. To the extent that Plaintiffs' claims against OCC are not dismissed, OCC intends to file an answer and to raise all appropriate defenses at that time.

FACTUAL BASIS FOR THE CROSS-CLAIMS

THE 1986 STOCK PURCHASE AGREEMENT AND DIAMOND SHAMROCK'S (NOW MAXUS') OBLIGATIONS TO OCC

1. Diamond Alkali Company ("Diamond Alkali") was founded in 1910. In 1951, Diamond Alkali acquired Kolker Chemical Works, Inc. ("Kolker"). As part of the acquisition, Kolker transferred to Diamond Alkali a tract of land located at 80 Lister Avenue in Newark, New Jersey. From 1951 until 1967, Diamond Alkali owned and operated the chemical plant on that site where it manufactured pesticides and herbicides as a part of its agricultural chemical business. Some of the processes involved in these manufacturing activities purportedly formed an impurity known as "dioxin" as a by-product.

2. In 1967, Diamond Alkali merged with Shamrock Oil and Gas Company, and the merged company's name was changed to Diamond Shamrock Corporation ("Old Diamond Shamrock"). Old Diamond Shamrock continued to operate the plant at 80 Lister Avenue until August 1969. In March 1971, it sold the property to Chemicaland Corporation, which manufactured benzyl alcohol. Upon information and belief, no subsequent purchaser of the property manufactured any dioxin-containing product on the site.

3. In 1982, the United States Environmental Protection Agency ("EPA") initiated a National Dioxin Strategy targeting facilities that had produced certain herbicides and pesticides for soil sampling and testing for dioxin. The study produced a list of contaminated sites, including 80 Lister Avenue and a nearby site, 120 Lister Avenue (collectively referred to in Plaintiffs' Complaint as the "Lister Site"). The NJDEP subsequently issued an administrative order on June 13, 1983, requiring Diamond Shamrock to implement certain partial site stabilization measures designed to prevent further off-site migration of dioxin.

4. Also in 1983, New Diamond Shamrock Corporation ("Diamond Shamrock," now known as Maxus) was incorporated in Delaware as "the successor to various corporations," including Diamond Alkali and Old Diamond Shamrock. (*See* Diamond Shamrock 1984 Annual Statement on Form 10-K). This statement was repeated in Diamond Shamrock's Annual Statements for the years 1985 through 1987. It was not until its 1988 Annual Statement that Diamond Shamrock changed the stated purpose of its incorporation from that of being "the successor to various corporations" to that of being a "Holding Company."

5. Upon its formation, Diamond Shamrock became the parent company of Old Diamond Shamrock, which soon changed its name to Diamond Shamrock Chemicals Company ("DSCC"). Upon information and belief, as part of this reorganization, Diamond Shamrock

acquired most of the assets of DSCC through a series of assignment and assumption agreements. The assets that Diamond Shamrock acquired and the liabilities that it assumed from DSCC included, among others, the discontinued chemical assets of DSCC, like its former agricultural chemicals business ("Ag Chem"). The Ag Chem business sold Ag Chem products and owned, leased, or operated facilities at Lister Avenue and elsewhere. Upon information and belief, by 1986, DSCC held only the active, operating assets of the chemicals business. Thus, by its own admission in Annual Statements from 1984 through 1987, Diamond Shamrock (now Maxus) became the successor to Old Diamond Shamrock. It continues today to be the successor to Old Diamond Shamrock's Ag Chem business, as well as other discontinued businesses.

6. In 1984, DSCC acquired 120 Lister Avenue and, in 1986, reacquired ownership of 80 Lister Avenue. In August 1986, DSCC transferred ownership of both sites to another Diamond company, Diamond Shamrock Chemical Land Holdings, Inc. (which, upon information and belief, is now known as Tierra).

7. In or about 1986, Diamond Shamrock announced its intention to sell DSCC (formerly Old Diamond Shamrock). DSCC had previously owned, leased, or operated numerous plant sites and businesses and had produced numerous former products that were unrelated to DSCC's ongoing chemicals business (the "Discontinued Operations"). Because Diamond Shamrock knew that these Discontinued Operations would deter potential purchasers, Diamond Shamrock informed prospective buyers that it would retain responsibility for liabilities relating thereto, including:

> All litigation arising out of DSCC's manufacturing operations at 80 Lister Avenue, Newark, New Jersey, and other sites where manufacturing operations have been permanently abandoned, including claims for property damage and personal injury arising from the cleanup of such sites.

8. OCC ultimately acquired DSCC and its active, ongoing "Chemicals Business" pursuant to a Stock Purchase Agreement dated September 4, 1986 (the "SPA"). The "Chemicals Business" is defined in Section 2.02(b) of the SPA as "the DSCC Companies taken as a whole and the Business Units taken as a whole, and the business being conducted by them in the aggregate as of the date of this Agreement [September 4, 1986] . . . ." (SPA, § 2.02(b).) Under the SPA, Diamond Shamrock sold all of the outstanding stock of DSCC to Oxy-Diamond Alkali Corporation, an affiliate of OCC. Oxy-Diamond Alkali Corporation merged into OCC on November 24, 1987, and, after a corporate name change, DSCC merged into OCC on November 30, 1987.

9. Diamond Shamrock changed its name to Maxus in 1987.

10. Diamond Shamrock's pre-sale acknowledgement that it, rather than DSCC or DSCC's buyer, would retain responsibility for the Ag Chem business, the Lister Site, and other Discontinued Operations was incorporated into the SPA. Section 9.03(a) of the SPA requires Diamond Shamrock (now Maxus) to indemnify, defend and hold harmless OCC

> from and against any and all claims, demands or suits (by any Entity, including, without limitation, any Governmental Agency), losses, liabilities, damages, obligations, payments, costs and expenses, paid or incurred, whether or not relating to, resulting from or arising out of any Third Party claim (including, without limitation, the reasonable cost and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees in connection therewith), and whether for property damage, natural resource damage, bodily injury (including, without limitation, damage and injury related to products and injury to any person living or dead on the date hereof or born hereafter), governmental fines or penalties (including, without limitation, for the violation of permits), pollution, threat to the environment, environmental remediation, or otherwise (individually and collectively, "Indemnifiable Losses") relating to, resulting from or arising out of . . . (iii) any . . . Superfund Site . . . , (iv) the "Inactive Sites" . . . [and] (viii) the Historical Obligations. . . .

11. Section 9.03(a)(iii) of the SPA requires Maxus to "indemnify, defend and hold harmless" OCC, from and against, among other things, "any and all claims, demands, or suits . . . relating to, resulting from, or arising out of . . . any . . . Superfund Site."

12. Schedule 2.07(g) to the SPA lists fifteen DSCC sites that were included on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 49 U.S.C. § 6901, *et seq.*, as of July 10, 1986. The Schedule includes three Superfund Sites in New Jersey, including "Diamond Alkali (#488)" in Newark, New Jersey. Based on the allegations in the Complaint, Plaintiffs' underlying action relates to, results from, and arises out of the Diamond Alkali Superfund Site.

13. Section 9.03(a)(iv) of the SPA contains Maxus' defense and indemnity obligation for "Inactive Sites." Maxus must "indemnify, defend and hold harmless" OCC, among other things, from and against "any and all claims, demands, or suits . . . relating to, resulting from, or arising out of"

> the "Inactive Sites" (which for purposes of this Agreement, shall mean those former chemical plants and commercial waste disposal sites listed on Schedule 9.03(a)(iv) and all other properties which were previously, but which, as of the Closing Date, are not owned, leased, operated or used in connection with the business or operations of any Diamond Company, including, without limitations, any of DSCC Company, or any predecessor-in-interest thereof), including, without limitations, any matter relating to any of the Inactive Sites for which (A) any Diamond Company (including, without limitation, any DSCC Company) on or prior to the Closing Date agreed to indemnify, defend or hold harmless any Entity, or (B) any Diamond Company may otherwise be held liable.

14. Schedule 9.03(a)(iv) to the SPA contains a list of the Inactive Sites, including numerous former DSCC plant sites in the State of New Jersey. The Schedule lists a plant site located in Newark, New Jersey, which refers to the Lister Site. Based on the allegations in the

Complaint, Plaintiffs' underlying action relates to, results from, and arises out of the Inactive Site of Old Diamond Shamrock in Newark, New Jersey.

15. Section 9.03(a)(viii) sets forth Maxus' obligation to indemnify OCC for "Historical Obligations." Maxus must "indemnify, defend and hold harmless" OCC from and against, among other things, "any and all claims, demands, or suits . . . relating to, resulting from, or arising out of"

> the Historical Obligations and any other obligations or liabilities (absolute or contingent) of any Diamond Company (including, without limitation, any DSCC Company prior to the Closing) or any predecessor-in-interest thereof or of any DSCC Company unrelated to the Chemicals Business, including, without limitations, obligations and liabilities arising out of, resulting from or incurred in connection with, any ownership, use or operation of the business or assets of any Diamond Company other than a DSCC Company, whether before or after the Closing Date.

16. Section 2.23(b) defines Historical Obligations as "those obligations, liabilities, guarantees and contingent liabilities of the DSCC Companies, or any of them, which arose prior to or in connection with the Reorganization and which relate to any business, asset or property other than those of the Chemicals Business." "Reorganization" means the reorganization of Diamond Shamrock Corporation in 1983 and 1984 whereby DSCC became a wholly owned subsidiary of Diamond Shamrock Corporation. (SPA, § 2.23(a).)

17. Moreover, Schedule 2.23 to the Agreement sets forth a description of certain specific Historical Obligations and describes by category all other Historical Obligations. Item number 12 identifies the following as Historical Obligations, among numerous other examples:

> ***All liabilities and obligations associated with the discontinued businesses of DSCC or any predecessor in interest*** (regardless of whether or not chemical, petroleum or coal related) including, without limitation, all liabilities and obligations associated with any acquisition, disposition and merger agreement relating to such discontinued businesses, including, without limitation to the following: . . ***Ag Chem*** . . . .

(Emphasis added.)

18. In addition to the requirement to defend, indemnify and hold harmless OCC from and against liabilities associated with Historical Obligations, the SPA also mandates that Maxus use its best efforts to have OCC released from any such liabilities. Section 12.11 of the SPA provides in relevant part as follows:

> (a) [Maxus] shall, and shall cause or, in the case of less than majority owned Entities, shall use its best efforts to cause, each of the other Diamond Companies to, use its and their best efforts to obtain at the earliest practicable date, whether before or after the Closing Date, any amendments, novations, releases, waivers, consents or approvals necessary to have each of the DSCC Companies released from its obligations and liabilities under the Historical Obligations. Seller shall, and shall cause or, in the case of less than majority owned Entities, shall use its best efforts to cause, each of the other Diamond Companies to, remain in compliance with its and their respective obligations under each of the Historical Obligations to the extent any Diamond Company remains obligated or has any liabilities thereon.
>
> (b) If reasonably necessary in the circumstances, Seller's obligations to use its best efforts shall include, without limitation, providing its guarantee or the guarantee of any of the other appropriate Diamond Companies (other than the DSCC Companies) in consideration for the granting or obtaining of any such amendments, novations, releases, waivers, consents or approvals.

YPF'S PURCHASE OF MAXUS IN 1995 AND SUBSEQUENT EVENTS

19. In 1995, YPF paid $746 million to acquire Maxus. YPF's 1995 Annual Report described the acquisition as follows:

> During 1995 YPF acquired Maxus Energy Corporation for $746 million. ***The acquisition, which represented YPF's most significant single corporate step since becoming a public company in 1993, substantially accelerated our international presence.*** . . . Maxus provides YPF with high quality producing assets in Indonesia and the U.S. Mid-Continent. We expect these assets to help fund the development of Maxus' strategic Latin American properties. These properties fit well with YPF's Latin American growth strategy. . . . In addition, Maxus provides the

> Company with a strong technology base that would have taken many years to build from the ground up.

(Emphasis added.)

20. According to YPF's 1996 Annual Statement, YPF reorganized Maxus in 1996, transforming YPF International, Ltd. a/k/a YPF International, S.A. ("YPF International") from a subsidiary of Maxus to the parent of Maxus.

21. YPF described this reorganization in its 1996 Annual Report as follows:

> In June 1996 . . . Maxus, sold all of the issued and outstanding shares of capital stock of its wholly owned subsidiary, YPF International, Ltd. ("International"), a Cayman Island Corporation, to YPF ("Purchaser"), pursuant to a Purchase and Sale Agreement dated July 1, 1996.
>
> [YPF] conducts the business of its international upstream business unit through YPF International, which owns all the common shares of Maxus Energy Corporation . . . .

22. At around the same time, YPF publicly disclosed that Maxus' assets prior to the reorganization included proved reserves of 373.5 million barrels of oil and gas equivalent ("BOE"). According to YPF's public disclosures, YPF increased Maxus' proved reserves to approximately 450 million BOE in 1997. YPF increased Maxus' proved reserves yet again in 1998 to a total of 566.5 million BOE. This increase was net of reductions for annual production during the period of 1995 through 1997. Indeed, according to YPF, the oil and gas reserves acquired from Maxus constituted over one-sixth of YPF's global reserves.

23. Not only was Maxus the "most significant" acquisition YPF had ever made, but YPF also consolidated Maxus into one of its four operating business units. In its 1998 Form 20-F/A filed on June 18, 1999, YPF stated:

> [YPF] conducts the business of its international upstream business unit through YPF International, which owns all the common shares of Maxus . . . which was acquired by YPF in 1996.

Indeed, YPF International had no oil and gas assets other than those of Maxus.

24. At the same time that YPF was touting its purchase of Maxus, YPF recognized that Maxus and YPF International owed indemnification obligations to OCC which arose out of the SPA. In its 1998 Form 20-F/A, YPF stated:

> Laws and regulations relating to health and environmental quality in the United States. . . in which YPF International operates, affect nearly all of the operations of YPF International...At December 31, 1998, reserves for the environmental contingencies discussed herein totaled approximately U.S. $123 million. Management of YPF International believes it has adequately reserved for all environmental contingencies which are probable and can be reasonably estimated . . . .

25. The 1998 Form 20-F/A filed by YPF even discusses a 1990 consent decree that Maxus and Tierra negotiated with the NJDEP relating to the Lister Site:

> Construction of the final remedial action as contemplated by the consent decree is expected to cost approximately U.S. $23 million and take at least three years to complete. The work is being supervised and paid for by CLH. . . . YPF International has fully reserved the estimated costs of performing the remedial action plan . . . .

26. In its 1999 Form 20-F/A, YPF disclosed that "[a]s of December 31, 1999, Repsol, S.A. ("Repsol"), which holds 91.81% of YPF shares, controls YPF."

27. In its Form 20-F for the fiscal year ended December 31, 2000, Repsol described its acquisition of and interest in YPF as follows:

> Repsol YPF initially acquired a 14.9% equity stake in YPF from the Argentine government on January 20, 1999. On June 23, 1999, Repsol YPF acquired an additional 82.47% of the outstanding capital stock of YPF pursuant to a tender offer. During the course of the remaining of 1999 and 2000 Repsol YPF acquired additional shares of YPF and, as of December 31, 2000, Repsol YPF owned 99.0% of YPF.
>
> As a result of the acquisition of YPF, Repsol YPF is Spain's largest company in terms of revenues, the largest private sector energy company in Latin America in terms of total assets

> and one of the world's ten largest oil companies on the basis of market capitalization and proved reserves.

Repsol went on to characterize its management structure as follows:

> Repsol YPF has a unified global corporate structure with headquarters in Madrid, Spain and Buenos Aires, Argentina. Repsol YPF manages its business as a single organization at both the operational and organizational levels. Key functions such as strategic planning, control, finance and human resources are centrally coordinated.

28. In its Form 20-F for 2000, YPF disclosed that "YPF's operations during 2000 were organized into four business units." One of those business units was "Exploration and Production." Repsol further disclosed that YPF International (comprised substantially of Maxus' assets) was part of the Exploration and Production business unit.

29. Both YPF and Repsol treated Maxus, YPF International, and YPFH as nothing more than business units from which they could extract valuable assets, as shown by a March 2, 2005 email from Fernando Nardini Fernandez to David Wadsworth, then the General Counsel of Maxus, which states:

> a) Since 1996, YPF recorded contributions to the capital of YPF International, owner of the US group, among other companies. YPF International then redistributed the funds, some going to the US group, and some elsewhere. We don't have the detailed records regarding this latter redistribution.
>
> b) In 2001, YPF Holdings was moved directly under YPF S.A., so the shown contribution was made after that reorganization. There were no further contributions to the capital of YPF Holdings after 2001.
>
> c) Since 1999 until 2001 the negative amounts represent reductions of capital. These were mainly generated by the sale (to the new Spanish head office) of international properties and then distribution of the proceeds.

The graph attached to the email shows that YPF International's capital, all or much of which came from Maxus, was reduced from $981.8 million in 1997, to a negative $751.3 million in

2001. According to the email, the $1.5 billion "reduction of capital" experienced by Maxus' then-parent company was largely attributable to transfers of Maxus' assets to Repsol.

30. Notwithstanding this stripping of assets, in June 2001, Maxus represented on a "self-guarantee" form to the NJDEP that its then-parent, YPF International, had a net worth as of December 31, 2000 of $1.778 billion and revenues of $1.873 billion.

31. During 2001, when Repsol was depleting assets from YPF International, then the parent of Maxus, Repsol also depleted Maxus' funds directly by means of a "loan" from Maxus to Repsol in the amount of $325 million.

32. Thus, at the same time that YPF and Repsol publicly demonstrated their commitment to fulfill Maxus' environmental indemnity obligations, they privately stripped assets out of Maxus until nothing of any value was left in the company. With assistance from advisors, YPF devised the scheme to deplete Maxus' assets in 1996. Repsol condoned and continued this scheme when it acquired a controlling interest in YPF in 1999. By 2005, Repsol's and YPF's scheme had rendered Maxus unable to fund its liabilities absent support from one of its parent companies.

33. During 2005, the outside audit firm of Deloitte & Touche LLP ("Deloitte") required YPF to promise that it would pay the obligations of YPFH, Maxus' then-direct parent, before it would give YPFH an unqualified opinion in YPF's consolidated financial statements. To fulfill Deloitte's requirement, beginning on March 8, 2005, and continuing through August 8, 2006, YPF issued a series of letters promising to pay, with certain qualifications, the obligations of YPFH. YPF's August 8, 2006 qualified promise to pay expires on August 31, 2007. During this same time frame, YPF increased the size of its letter of credit with YPFH from $35 million

USD to $190 million USD. The letter of credit was set to expire on January 1, 2007. By March 31, 2006, Deloitte determined that YPFH had a negative net worth of $148.5 million.

34. Thus, by 2006—eleven years after YPF acquired Maxus and seven years after Repsol acquired YPF—YPF and other Cross-Claim Defendants had successfully depleted Maxus' multi-billion dollar assets and turned Maxus into a shell company with a negative net worth. In the course of depleting the assets of Maxus, YPF deliberately and maliciously targeted the obligations that Maxus owed to OCC under the SPA—including obligations owed to OCC in the State of New Jersey—and ensured that Maxus would be stripped of the financial resources necessary to perform its obligations to OCC.

35. During at least 2002 and 2003, YPF, S.A. executed "Self-Guarantee" applications on behalf of Maxus for submission to the NJDEP. In 2002, YPF reported to the NJDEP that its net worth as of December 31, 2001 was $12.753 billion, a substantial part of which came from Maxus.

THE CURRENT LITIGATION

36. In their Complaint, Plaintiffs assert claims against OCC and the Cross-Claim Defendants pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a to -23.11z (the "Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -37.23 (the "WPCA"), and New Jersey common law. These claims are based in part on Plaintiffs' contention that "[f]or roughly twenty years, OCC and its predecessors-in-interest deliberately polluted the Passaic River with 2,3,7,8-Tetrachlorodibenzo-p-dioxin ("TCDD") . . . , DDT and various other pesticides and chemicals." (Am. Compl. ¶ 1.) Plaintiffs allege that the purported pollution originated at two sites located at the Lister Site.

37. OCC is a Defendant in this action solely by the acquisition of DSCC in 1986. OCC has never independently owned or operated the Lister Site. DSCC's operations at 80 Lister Avenue ceased in the late 1960s. Moreover, in August 1986, ***before*** OCC's affiliate purchased the stock of DSCC, Diamond Shamrock caused DSCC to transfer ownership of 80 and 120 Lister Avenue to Diamond Shamrock Chemical Land Holdings, Inc. (which, upon information and belief, is now known as Tierra).

38. Accordingly, Plaintiffs' claims against OCC relate to, result from, and arise out of a Superfund Site, an Inactive Site, and/or a Historical Obligation, as those terms are defined in the SPA. Thus, pursuant to Sections 9.03(a) generally and subsections (iii), (iv), and (viii) of that section specifically, Maxus owes a defense and a full indemnity to OCC for all of the claims asserted by Plaintiffs against OCC in the Complaint.

39. Plaintiffs also allege that for twenty years, Defendants, including OCC, "have orchestrated and implemented a strategy to delay and impede the clean-up and restoration of the Passaic River." (Am. Compl. ¶ 1.) They assert that beginning in 1987, Maxus and other Cross-Claim Defendants orchestrated a scheme "to shift blame away from their activities on the Lister Site," "to mislead the regulators," and "to bias the results of the investigation and testing that they controlled." (*Id.* ¶¶ 54-56.) Plaintiffs contend that the delay caused by this alleged conduct has contributed to the purported pollution of the Passaic River and has increased the purported damages.

40. Maxus and/or its parents and affiliates—and not OCC—have controlled the environmental response at the Lister Site. That response commenced during the Reorganization in 1983, more than three years before OCC's affiliate acquired the stock of DSCC. During the time period involved in these allegations, Maxus and later Tierra had assumed the responsibility

of defending and indemnifying OCC pursuant to Maxus' obligations to indemnify OCC as set forth in Section 9.03 of the SPA. OCC justifiably relied on Maxus and Tierra as OCC's indemnitors to resolve the claims of the NJDEP and the EPA. If Plaintiffs' allegation that there has been a conspiracy to avoid or to delay clean up of the Passaic River is true, then Maxus and Tierra have breached their obligations to OCC. Accordingly, Maxus and Tierra owe OCC a common law obligation to indemnify and hold harmless OCC for any liability OCC may incur because of their wrongful acts. This common law indemnity is in addition to the contractual indemnities owed by Maxus.

41. In 2005, OCC tendered this case to Maxus in accordance with the procedures set forth in Section 9.04 of the SPA. Maxus accepted the defense, but it purported to reserve the right to deny its obligation to indemnify OCC for any final judgment in certain respects.

42. On November 30, 2006, Plaintiffs filed their Complaint, alleging that "[t]hrough a series of related transactions, Repsol, YPF, YPFH, CLHH, Maxus, and Tierra (the 'Repsol Group') have worked to strand the environmental liabilities associated with the Newark Bay Complex in Maxus and Tierra, while systematically stripping Maxus' and Tierra's assets and ability to satisfy these obligations." (Am. Compl. ¶ 24; *see also id.* ¶ 25-38.)

43. On information and belief, Plaintiffs base these allegations in large part on information they obtained during the course of preliminary jurisdictional discovery in this case. No discovery on the merits has occurred, and thus the parties have not had an opportunity to discover all of the facts showing this scheme and course of conduct by YPF and other Cross-Claim Defendants.

44. From 1995 through the present, YPF has actively concealed the scheme by repeatedly acknowledging YPF's responsibility to indemnify OCC for all claims related to,

resulting from, or arising out of Superfund Sites, among other things. From 1999 through the present, Repsol has continued this concealment and facilitated the scheme begun by YPF.

45. Only after Plaintiffs brought their Complaint and after Plaintiffs deposed corporate representatives from YPF, YPFH, and CLH did OCC learn of the pervasive dissipation of Maxus' assets by Repsol and YPF and their subsidiaries. OCC could not have known of this scheme prior to such time.

46. On information and belief, since 1995, Maxus and other Cross-Claim Defendants have conspired among themselves and otherwise committed various intentional torts against OCC. These actions have been targeted at OCC in New Jersey, for the purpose and/or with the result of interfering with the ability of Maxus to perform its indemnification obligations to OCC that are owed pursuant to Section 9.03 of the SPA.

47. Further, Maxus has breached its obligations to OCC arising under SPA Section 12.11 and, on information and belief, has worked in concert with other Cross-Claim Defendants to transfer the assets of Maxus resulting in its inability to perform its obligations pursuant to SPA Section 12.11.

48. Notwithstanding the fact that YPF's International Unit was comprised substantially of Maxus' assets and that YPF previously had identified Maxus as a business unit of YPF in disclosure statements, YPF and Repsol have taken the position since the filing of this case that Maxus is not a business unit of YPF but is rather a wholly separate and independent company.

49. YPF and Repsol have refused to assume responsibility for the obligations that Maxus owes to OCC, although they collectively have destroyed the independent value of Maxus,

have treated it as a part of one enterprise, and have rendered it unable—due to their tortious acts—of performing its obligations to OCC.

50. Although Maxus agreed to defend OCC in the current litigation, Maxus has failed to take reasonable steps to defend OCC diligently in the current suit, as required by Section 9.04(b) of the SPA by, among other things, failing to provide OCC with separate counsel in the face of a conflict of interest with respect to certain issues raised in the current suit. Indeed, beginning in approximately February 2007, Maxus instructed counsel retained by Maxus for OCC and representing OCC as counsel of record in this action that they could not communicate with OCC.

51. Because a conflict of interest now exists between OCC and Maxus and Tierra and because Maxus has failed to defend OCC's interests adequately, OCC asked Maxus to provide OCC with separate counsel in this action. Maxus refused this request, and OCC has been forced to assume its own defense of the claims asserted by Plaintiffs. Therefore, Maxus is liable to OCC for all reasonable expenses associated with such defense including attorneys' fees, pursuant to SPA Section 9.04(b).

FIRST COUNT – AGAINST MAXUS

BREACH OF CONTRACT

52. OCC repeats each allegation of paragraphs 1-51 above as though fully set forth in its entirety herein.

53. The SPA is a valid and existing contract.

54. Section 9.0(3)(a) of the SPA requires Maxus to "indemnify, defend and hold harmless" OCC for all "Indemnifiable Losses" relating to any of the following:

(a) Superfund Sites and "Federal Superfund Litigation" (subsection (iii));

(b) "Inactive Sites," (subsection (iv)); and

(c) "Historical Obligations" (subsection (viii)).

55. The claims asserted by Plaintiffs in this action are subject to one or more of these indemnification provisions in the SPA. Thus, Maxus is required to defend OCC in this action and to indemnify OCC for all costs associated with Plaintiffs' claims, including damages, if any, expenses, and attorneys' fees.

56. Maxus has failed to provide a diligent defense to OCC, thus breaching its contractual obligation to OCC. Accordingly, pursuant to SPA Section 9.04(b), OCC has retained separate counsel to represent it in this action.

57. As a result of Maxus' breach of its contractual duty to defend OCC in this action, OCC has incurred damages in the form of its attorneys' fees and expenses in this action and will continue to incur such damages.

58. In the event that Plaintiffs obtain a judgment against OCC on any or all of their claims in this case, Maxus would be contractually required to pay the amount of such judgment. If Maxus fails to pay such a judgment, this would cause further damage to OCC.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Order Maxus to pay or to reimburse OCC for all damages, if any, (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that OCC incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

b. Enter declaratory judgment against Maxus for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that OCC may incur or that may be imposed on OCC in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

c. Enter declaratory judgment against Maxus holding that OCC was justified in retaining separate counsel in this action and in filing these Cross-Claims and that by taking these actions, OCC did not breach any duty it owed to Maxus under the SPA.

d. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

SECOND COUNT – AGAINST MAXUS AND TIERRA

COMMON LAW INDEMNIFICATION

59. OCC repeats each allegation of paragraphs 1-58 above as though fully set forth in its entirety herein.

60. Without admitting liability, OCC's liability, if any, arising out of this action is vicarious, secondary, passive, and without wrongful conduct, while the liability (if proven by Plaintiffs) of Maxus and Tierra is direct, primary, active, and wrongful.

61. OCC is therefore entitled to common law indemnification from Maxus and Tierra for any liability imposed on or damages incurred by OCC relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint at this time or at any time in the future.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Order Maxus and Tierra to pay or reimburse OCC for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that OCC incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

b. Enter a declaratory judgment against Maxus and Tierra holding that they are required to indemnify OCC for all losses (including, but not limited to damages,

costs, expenses, and attorneys' fees) that OCC may incur or that may be imposed on OCC in the future as a result of the actions and omissions of Maxus and Tierra relating to, resulting from, or arising out of the investigation, clean-up, or restoration of the Lister Site or Plaintiffs' Complaint.

c. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

THIRD COUNT – AGAINST MAXUS

DECLARATORY JUDGMENT

62. OCC repeats each allegation of paragraphs 1-61 above as though fully set forth in its entirety herein.

63. Maxus has admitted publicly, both before and after September 4, 1986 (*i.e.*, the closing date of the SPA) that it is the successor to DSCC with respect to sites, businesses, or operations unrelated to the Chemicals Business, including, without limitation, discontinued operations of Old Diamond Shamrock.

64. OCC had a reasonable basis for relying on these public statements.

65. Maxus is now estopped from denying that it is the successor to DSCC with respect to sites, businesses, or operations unrelated to the Chemicals Business, including, without limitation, discontinued operations of Old Diamond Shamrock.

66. To the extent that OCC is determined to be liable for Plaintiffs' claims because it is the successor to DSCC, OCC is entitled to a declaratory judgment holding that between OCC and Maxus, Maxus is the true successor to DSCC, relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Enter an Order declaring that if OCC is found liable as the successor to DSCC with respect to the claims asserted by Plaintiffs, then OCC is entitled to a judgment against Maxus for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) incurred by OCC or imposed on OCC relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

b. Enter declaratory judgment against Maxus holding that OCC was justified in retaining separate counsel in this action and in filing these Cross-Claims and that by taking these actions, OCC did not breach any duty it owed to Maxus under the SPA.

c. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

FOURTH COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS

BREACH OF CONTRACT

67. OCC repeats each and every allegation of paragraphs 1-66 above as though fully set forth in its entirety herein.

68. The SPA is a valid and existing contract.

69. Section 9.0(3)(a) of the SPA requires Maxus to "indemnify, defend and hold harmless" OCC for all "Indemnifiable Losses" relating to any of the following:

(a) Superfund Sites and "Federal Superfund Litigation" (subsection (iii));

(b) "Inactive Sites," (subsection (iv)); and

(c) "Historical Obligations" (subsection (viii)).

70. All of the claims asserted by Plaintiffs in this action are subject to one or more of these indemnification provisions in the SPA. Thus, Maxus is required to defend OCC in this

action and to indemnify OCC for all costs associated with Plaintiffs' claims, including damages, expenses, and attorneys' fees.

71. Plaintiffs have alleged in Paragraphs 24-38 of the Complaint that all of the Cross-Claim Defendants are an Alter-Ego/Common Economic Unit.

72. OCC adopts all the allegations contained in Paragraphs 24-38 of Plaintiffs' Complaint and incorporates them fully herein.

73. Because Repsol, YPF, YPFH, Tierra, and CLH are the alter egos of Maxus and/or comprise a Common Economic Unit with Maxus, they are also contractually obligated to defend and to indemnify OCC in this action.

74. The Cross-Claim Defendants have failed to provide a diligent defense to OCC, thus breaching any contractual obligation they owe to OCC. Accordingly, pursuant to SPA Section 9.04(b), OCC has retained separate counsel to represent it in this action.

75. As a result of the Cross-Claim Defendants' breach of their contractual duty to defend OCC in this action, OCC has incurred damages in the form of its attorneys' fees and expenses in this action and will continue to incur such damages.

76. In the event that Plaintiffs obtain a judgment against OCC on any or all of the claims in this case, the Cross-Claim Defendants would be contractually required to pay the amount of such judgment. If the Cross-Claim Defendants fail to pay such a judgment, this would cause further damage to OCC.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Enter an Order declaring that the Cross-Claim Defendants are the Alter Egos of one another and together constitute a Common Economic Unit.

b. Enter an Order declaring that the Cross-Claim Defendants owe a contractual obligation to defend and to indemnify OCC in this case and are jointly and severally liable to OCC for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

c. Enter an Order declaring that any judgment awarded against Maxus is also a judgment against all other Cross-Claim Defendants.

d. Order the Cross-Claim Defendants to pay and to reimburse OCC for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that OCC incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

e. Enter an Order declaring that the Cross-Claim Defendants are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that OCC may incur or that may be imposed on OCC in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

f. Enter declaratory judgment against the Cross-Claim Defendants holding that OCC was justified in retaining separate counsel in this action and in filing these Cross-Claims and that by taking these actions, OCC did not breach any duty it owed to Maxus under the SPA.

g. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

FIFTH COUNT – AGAINST YPF AND REPSOL

TORTIOUS INTERFERENCE WITH CONTRACT

77. OCC repeats each allegation of paragraphs 1-76 above as though fully set forth in its entirety herein.

78. OCC pleads this Count Five in the alternative to Count Four.

79. In 1995 and continuing until the present, the SPA was and is a valid and existing contract. During that time period and pursuant to the SPA, Maxus owed and continues to owe certain indemnification obligations to OCC, including the duty to defend and to indemnify OCC relating to, resulting from, or arising out of the Lister Site, Plaintiffs' Complaint, and other sites in New Jersey.

80. At all times relevant to this action, YPF and Repsol were aware of the existence of the SPA and the defense and indemnification obligations owed by Maxus to OCC under that agreement.

81. In 1995 and thereafter, Maxus knew or should have known that the costs of the defense and indemnification obligations owed to OCC under the SPA, including obligations relating to, resulting from, or arising out the Lister Site, were likely to exceed the amount that Maxus reserved to cover such losses. *See* YPF 1998 Form 20-A. (By definition, these reserves covered only liability that was probable and quantifiable.) Indeed, in 1986, Maxus had estimated that costs related to the Lister Site and the Passaic River could potentially be as much as $140 million.

82. Knowing of these potentially costly contingent liabilities, YPF began in 1996 to devise and to implement a clever scheme intended to interfere tortiously with Maxus' ability to perform its indemnification obligations to OCC.

83. First, YPF created Tierra to assume Maxus' obligations to OCC. However, YPF only agreed to fund Tierra up to the amount currently on Maxus' accounting books as reserves for losses in connection with the duty to indemnify OCC. YPF knew or should have known that such amount was wholly inadequate. YPF thus attempted to strand environmental liabilities in a company without assets, *i.e.*, Maxus, while impermissibly capping Tierra's ability to pay by limiting its funding to only those "reserved amounts."

84. Second, at the same time that YPF set up Tierra, YPF began a systematic and complete dismantling of Maxus. It literally stripped all of Maxus' assets away and put them in other corporations it controlled, including YPF International.

85. To accomplish this, YPF caused Maxus to contribute all or substantially all of its international assets to a wholly owned subsidiary of Maxus, *i.e.*, YPF International. Next, it made YPF International the parent of Maxus. By doing so, it attempted to turn the assets of Maxus—which should have been used to perform Maxus' duties to OCC—into the assets of YPF International.

86. Repsol acquired control of YPF in 1999 and is thus liable for the actions of YPF prior to that time.

87. The actions of YPF and Repsol described herein were intentional and were significant factors in causing Maxus to breach its contractual obligations to OCC.

88. The actions of YPF and Repsol described herein were without justification.

89. This tortious interference commenced by YPF and continued by Repsol left Maxus unable to perform its indemnification obligations to OCC and unable to fulfill its obligations pursuant to SPA Sections 9.03 and 12.11.

90. As a result of the tortious interference of YPF and Repsol, OCC has incurred damages in the form of its attorneys' fees and expenses in this action and will continue to incur such damages.

91. Moreover, OCC will be further damaged by YPF and Repsol's tortious interference in the event that Plaintiffs obtain a judgment against OCC on any or all of the claims in this case and Maxus is unable to pay the amount of the judgment or to reimburse OCC for its attorneys' fees and expenses incurred in this action.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Enter a declaratory judgment against YPF and Repsol holding that they have tortiously interfered with Maxus' ability to perform duties owed to OCC pursuant to the SPA.

b. Order YPF and Repsol to pay and to reimburse OCC for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that OCC incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

c. Enter a declaratory judgment against YPF and Repsol holding that they are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that OCC may incur or that may be imposed on

OCC in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

d. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

SIXTH COUNT – AGAINST MAXUS, REPSOL, AND YPF

FRAUDULENT TRANSFERS

92. OCC repeats each allegation of paragraphs 1-91 above as though fully set forth in its entirety.

93. Commencing in or about 1996, YPF began systematically transferring all or substantially all of Maxus' assets to parties affiliated with YPF, most notably its wholly-owned subsidiary, YPF International.

94. Maxus received little or no consideration for the transfer of these assets. To the extent that Maxus received any consideration for the transfer of assets, the consideration was so disproportionate to the value of the assets as to be fraudulent.

95. By 2001, YPF and Repsol had caused a dissipation of all or almost all of the assets of Maxus.

96. These transfers constitute fraudulent transfers as defined in the New Jersey codification of the Uniform Fraudulent Transfer Act. N.J. Stat. Ann. §§25:2-20 to -34.

97. At the time of transfers, YPF and Repsol were fully aware of the obligations that Maxus owed to OCC under the SPA. These transfers were made with actual intent to hinder, delay, or defraud OCC.

98. As a result of the fraudulent transfers, Maxus now has a negative net worth.

99. Prior to the filing of the Complaint, OCC did not know that the transfers had occurred, leaving Maxus incapable of performing the debts owed to OCC under the SPA without

financial assistance of one of its affiliates or parents. Nor could this fact have been reasonably discovered by OCC prior to that time.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Enter a judgment avoiding the fraudulent transfers to the extent necessary to satisfy all damages awarded to OCC.

b. Enter other equitable relief to put OCC in the position it would have been but for the fraudulent transfers.

c. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

SEVENTH COUNT – AGAINST REPSOL AND YPF

UNJUST ENRICHMENT

100. OCC repeats each allegation of paragraphs 1-99 above as though fully set forth in its entirety.

101. Repsol and YPF have received a benefit through their scheme of transferring the multi-million dollar assets of Maxus to YPF International in an attempt to prevent those assets from being used to pay the indemnification obligations owed by Maxus to OCC under the SPA.

102. The retention of that benefit without paying the indemnification obligations contractually owed by Maxus to OCC would be unjust.

103. The unjust enrichment of Repsol and YPF has caused damages to OCC.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Enter a declaratory judgment against Repsol and YPF holding that they have been unjustly enriched to the detriment of OCC.

b. Order Repsol and YPF to pay and to reimburse OCC for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that OCC incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

c. Enter a declaratory judgment against Repsol and YPF holding that they are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that OCC may incur or that may be imposed on OCC in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

d. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

EIGHTH COUNT – AGAINST MAXUS

CONTRACTUAL INDEMNIFICATION

104. OCC repeats each allegation of paragraphs 1-103 above as though fully set forth in its entirety.

105. As a result of Maxus' breach of its contractual duty to defend OCC in this action, OCC has incurred damages in the form of its attorneys' fees and expenses in this action and will continue to incur such damages

106. In the event that Plaintiffs obtain a judgment against OCC on any or all of the claims in this case, then Maxus would be contractually required to pay the amount of such judgment. If Maxus fails to pay such a judgment, this would cause further damage to OCC.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Order Maxus to pay and to reimburse OCC for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that OCC incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

b. Enter a declaratory judgment against Maxus holding that Maxus is contractually obligated to indemnify OCC for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) incurred by or imposed upon OCC relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

c. Enter declaratory judgment against Maxus holding that OCC was justified in retaining separate counsel in this action and in filing these Cross-Claims and that by taking these actions, OCC did not breach any duty it owed to Maxus under the SPA.

d. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

NINTH COUNT – AGAINST REPSOL, YPF, YPFH, TIERRA, AND CLH

CONTRACTUAL INDEMNIFICATION

107. OCC repeats each allegation of paragraphs 1-106 above as though fully set forth in its entirety.

108. In the event that Plaintiffs obtain a judgment against OCC on any or all of the claims in this case, Repsol, YPF, YPFH, Tierra, and CLH as alter egos of Maxus and/or a common economic unit with Maxus, would be contractually required to pay the amount of such judgment entered against OCC. If Repsol, YPF, YPFH, Tierra, and CLH fail to pay such a judgment, this would cause further damage to OCC.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Enter an Order declaring that the Cross-Claim Defendants are the Alter Egos of one another and together constitute a Common Economic Unit.

b. Order Repsol, YPF, YPFH, Tierra, and CLH to pay and to reimburse OCC for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that OCC incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

c. Enter a declaratory judgment against Repsol, YPF, YPFH, Tierra, and CLH holding that they are contractually obligated to indemnify OCC for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) incurred by OCC relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

d. Enter declaratory judgment against Repsol, YPF, YPFH, Tierra, and CLH holding that OCC was justified in retaining separate counsel in this action and in filing these Cross-Claims and that by taking these actions, OCC did not breach any duty it owed to Maxus under the SPA.

e. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

TENTH COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS

CONTRIBUTION UNDER THE SPILL ACT

109. OCC repeats each allegation of paragraphs 1-108 above as though fully set forth in its entirety.

110. The Spill Act, N.J.S.A. 58:10-23.11f.a.(2), provides that whenever a person cleans up and removes a discharge of a hazardous substance, that person shall have a right of contribution against all dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance.

111. The Spill Act, N.J.S.A. 58:10-23.11f.a.(2), also provides that in an action for contribution, the contribution plaintiff need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to N.J.S.A. 58:10-23.11g.c.(1).

112. The Cross-Claim Defendants are "dischargers" or "persons in any way responsible for a discharge of hazardous substances" under the Spill Act.

113. While denying liability, in the event that OCC is held liable and incurs cleanup and removal costs and/or damages with regard to hazardous substances that the Cross-Claim Defendants discharged and/or for which they are responsible pursuant to the Spill Act, OCC is entitled to contribution under the Spill Act from the Cross-Claim Defendants.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Enter a declaratory judgment against the Cross-Claim Defendants holding that, in the event that OCC is found liable to Plaintiffs or any other person or party under the Spill Act for all cleanup, removal, and restoration costs and/or damages, if any, attributable to discharges of hazardous substances at or from the Lister Site, the Cross-Claim Defendants are jointly and severally liable to OCC to pay for any and all such liability.

b. Order the Cross-Claim Defendants to pay and to reimburse OCC for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and

attorneys' fees that OCC incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

c. Order the Cross-Claim Defendants to pay and to reimburse OCC for all cleanup, removal, and restoration costs incurred by OCC in connection with the Lister Site.

d. Enter a declaratory judgment against the Cross-Claim Defendants holding that they are jointly and severally liable to OCC for any cleanup and removal costs incurred by, or damages imposed on OCC, in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint, including costs or damages to be incurred after the conclusion of this action.

e. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

ELEVENTH COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS

STATUTORY CONTRIBUTION

114. OCC repeats each allegation of paragraphs 1-113 above as though fully set forth in its entirety.

115. Without admitting or acknowledging any liability for any costs incurred by any party in connection with this action, in the event that OCC is found liable to any person or party for any such costs, OCC is entitled to contribution from the Cross-Claim Defendants for all such damages incurred or to be incurred, pursuant to the New Jersey Joint Tortfeasors Act, N.J.S.A. 2A:53A-1, et seq., and the Comparative Negligence Act, N.J.S.A. 2A:15-5.1, et seq.

PRAYER FOR RELIEF

WHEREFORE, OCC prays that this Court:

a. Enter a declaratory judgment against the Cross-Claim Defendants holding that, in the event that OCC is found liable to Plaintiffs or any other person or party under the Spill Act for all cleanup, removal, and restoration costs and/or damages attributable to discharges of hazardous substances at or from the Lister Site, the Cross-Claim Defendants are jointly and severally liable to OCC to pay for any and all such liability.

b. Order the Cross-Claim Defendants to pay and to reimburse OCC for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that OCC incurs in the defense of this action or for any judgment entered in favor of Plaintiffs and against OCC on any of the claims asserted in the Complaint.

c. Order the Cross-Claim Defendants to pay and to reimburse OCC for all cleanup, removal, and restoration costs incurred by OCC in connection with the Lister Site.

d. Enter a declaratory judgment against the Cross-Claim Defendants holding that they are jointly and severally liable to OCC for any cleanup, removal, and restoration costs incurred by, or damages imposed on, OCC in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint, including costs or damages to be incurred after the conclusion of this action.

e. Award OCC reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

ARCHER & GREINER, P.C.
Attorneys for Defendant,
Occidental Chemical Corporation

BY: _____
ROBERT T. LEHMAN, ESQUIRE

DATED:

Oliver S. Howard (*admitted pro hac vice)*
GABLE & GOTWALS

Attorneys for Defendant,
Occidental Chemical Corporation

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Occidental Chemical Corporation ("OCC") hereby certifies that this matter is not the subject of any other action pending in any court or of any arbitration proceeding, nor is any action or arbitration contemplated. It is the intention of OCC to file a third-party complaint against YPF International, Ltd. OCC certifies that all parties known to it at this time who should be joined in this action have been so joined or will be joined in the near future.

ARCHER & GREINER, P.C.
Attorneys for Defendant,
Occidental Chemical Corporation

BY: _____
ROBERT T. LEHMAN, ESQUIRE

DATED:

Oliver S. Howard (*admitted pro hac vice)*
GABLE & GOTWALS
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Attorneys for Defendant,
Occidental Chemical Corporation

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, Plaintiffs, vs. OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC., and CLH HOLDINGS, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO: ESX-L-9868-05 CIVIL ACTION **ORDER GRANTING OCCIDENTAL CHEMICAL CORPORATION LEAVE TO FILE CROSS CLAIMS**

THIS MATTER having been brought before the Court on the application of Archer & Greiner, P.C. and Gable & Gotwals, attorneys for the Defendant Occidental Chemical

Corporation ("Occidental") for an Order granting Occidental Leave to File Cross Claims and for good cause shown;

IT IS on this _____ day of _____ 2007;

ORDERED that the Occidental's application is hereby **GRANTED** and Occidental shall be permitted to file Cross Claims against co-defendants prior to filing of an Answer to the Amended Complaint within seven (7) days of the date of entry of this Order.

It is **FURTHER ORDERED** that counsel for Occidental shall serve a copy of this Order on all counsel of record within seven (7) days of the date of entry of this Order.

IT IS SO ORDERED

_____
Hon. Rachel N. Davidson, J.S.C.

[ ] Opposed
[ ] Unopposed