

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

300 North LaSalle Street  
Chicago, Illinois 60654

Andrew A. Kassof, P.C.  
To Call Writer Directly:  
(312) 862-2474  
andrew.kassof@kirkland.com

(312) 862-2000

www.kirkland.com

Facsimile:  
(312) 862-2200

October 18, 2010

Honorable Marina Corodemus  
Corodemus & Corodemus LLC  
The Woodbridge Hilton Building  
120 Wood Avenue South, Suite 500  
Iselin, NJ 08830

Re: *NJDEP v. Occidental, et al.*; Docket No. ESX-L-986-05 (PASR)

Dear Judge Corodemus:

On June 28, 2010, Judge Lombardi entered Case Management Order XII (“CMO XII”), which granted plaintiffs leave to file an amended complaint “*solely* for the purpose of adding defendants to this litigation, including but not limited to assertion of *direct claims against Third Party Defendants under R. 4.8-11.*” (CMO XII ¶ 4) (emphasis added). Plaintiffs’ Third Amended Complaint did not add claims against any third party defendants as paragraph 4 contemplated. Instead, plaintiffs added new *first party* defendants—YPF International, S.A. and Maxus International Energy Company—along with new (and watered down) allegations against all of the *original* first party defendants, including Repsol YPF, S.A., YPF, S.A., YPF Holdings, Inc. and CLH Holdings, Inc.

Pursuant to Paragraph 8 of CMO XII, Repsol, YPF, YPFH, CLHH, and newly-added Bolivian defendant, YPF International, respectfully seek permission to file motions to dismiss the Third Amended Complaint for lack of jurisdiction under NJ S. Ct. Rule 4:6-2(b). Consistent with Judge Goldman’s prior Order on the jurisdictional issue, these defendants had intended to wait until the completion of discovery to re-assert their jurisdictional defenses on summary judgment. But because the Third Amended Complaint raises new allegations against Repsol, YPF, YPFH and CLHH, we feel that each must re-assert such jurisdictional defenses now, out of an abundance of caution, in order to preserve their objections. *See* NJ S. Ct. Rule 4:6-3; *Mapfre Reinsurance Corp. v. Baig Assoc., Inc.*, 2007 WL 1745296 (N.J. Super. A.D. June 19, 2007). Similarly, as a newly added defendant, YPFI must file its jurisdictional motion to dismiss now, or risk waiver on the issue.

**Legal Basis for the Motions.** The proposed motions to dismiss raise a threshold legal issue that should be resolved before subjecting Repsol, YPF, YPFI, YPFH, and CLHH to further litigation in a foreign forum. As explained in their prior jurisdictional motions, Repsol, YPF, YPFH, and CLHH are all foreign corporations that maintain no minimum contacts with New Jersey, such that they reasonably should have anticipated being haled into protracted litigation in

KIRKLAND & ELLIS LLP

Honorable Marina Corodemus  
Corodemus & Corodemus LLC  
October 18, 2010  
Page 2

this State. None of these companies has *any* continuous, systematic contacts with the State of New Jersey, nor is there any basis for the exercise of specific jurisdiction over them. Bolivian company YPF International is no different. As a result, Repsol, YPF, YPFH and CLHH seek to renew their motions to dismiss (and YPF International seeks to file its motion for the first time) based on the Court's lack of personal jurisdiction in order to preserve their jurisdictional defenses while discovery under CMO XII continues.

**Anticipated Benefits to Judicial Economy and Advancement of Ultimate Resolution.**

Allowing the requested motions to dismiss would serve several interests. *First*, none of these foreign defendants can simply answer and deny the allegations in the new Third Amended Complaint at this point. Under the rules and case law, each company *must* file a motion to dismiss for lack of jurisdiction to preserve its defense. *Second*, permitting the motion now would enable each company to present a more robust record on the jurisdictional issue than what the parties previously made available to Judge Goldman. To take one example, Judge Goldman exercised personal jurisdiction over Repsol based, in part, on a \$325 million loan from Maxus that, allegedly, "has never been paid and may never be paid." (Opinion, dated 9/5/2008, at 46) And while the State's Third Amended Complaint now softens their earlier claim that the loan "remained outstanding" to say that "it is unclear whether such loan was ever repaid" (*cf.* 2d Am. Cplt. ¶ 47 with 3rd Am. Cplt. ¶ 55), this centerpiece allegation remains completely false: Repsol fully repaid the entire loan, with interest, on an amortization schedule that ended in February 2005. *Third*, the granting of any of the jurisdictional motions would eliminate one or more parties from the case without forcing them to litigate plaintiffs' far-fetched (and inaccurate) allegations on the merits. *Finally*, even if denied, the Court's further ruling on this issue would assist the parties in framing the jurisdictional debate throughout the remainder of discovery.

We believe that a jurisdictional motion to dismiss is significantly different from any other motion that a party may seek to make in this case (other than a motion implicating improper process), because it is the only motion required by the Rules to be made within a specified period of time. R. 4:6-3. Thus, we ask Your Honor to permit our clients to make such a motion, which R. 4:6-3 requires be made no later than 90 days after service of an answer.

We thank the Court in advance for its consideration of this request.

Respectfully submitted,



Andrew A. Kassof, P.C.

**KIRKLAND & ELLIS LLP**

Honorable Marina Corodemus  
Corodemus & Corodemus LLC  
October 18, 2010  
Page 3

cc: Mark H. Sobel  
William J. Jackson  
John D.S. Gilmour  
Michael Gordon