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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF THE NEW JERSEY
ENVIRONMENTAL PROTECTION AGENCY,
And THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION,
TIERRA SOLUTIONS, INC., MAXUS ENERGY
CORPORATION, REPSOL YPF, S.A. YPF, S.A.,
YPF HOLDINGS, INC. and CLH HOLDINGS,

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY,

SUPERIOR COURT OF
NEW JERSEY

LAW DIVISION – ESSEX
COUNTY

DOCKET NO. ESX-L-9868-05 **PASR**

**CBS CORPORATION'S
ANSWER TO THIRD-PARTY
COMPLAINT "B"**

A.C.C., INC.
ACH FOOD COMPANIES, INC.
ACTIVE OIL SERVICE
ADCO CHEMICAL COMPANY
AGC CHEMICALS AMERICAS, INC.
ALDEN-LEEDS, INC.
ALLIANCE CHEMICAL, INC.
ALUMAX MILL PRODUCTS, INC.
AMCOL REALTY CO.
AMERICAN INKS AND COATINGS
CORPORATION
APEXICAL, INC.
APOLAN INTERNATIONAL, INC.
ARKEMA, INC.
ASHLAND INC.
ASHLAND INTERNATIONAL
HOLDINGS, INC.
ASSOCIATED AUTO BODY & TRUCKS, INC.
ATLAS REFINERY, INC.
AUTOMATIC ELECTRO-PLATING CORP.
AKZO NOBEL COATINGS, INC.
BASF CATALYSTS LLC
BASF CONSTRUCTION CHEMICALS INC.
BASF CORPORATION
BAYER CORPORATION
BEAZER EAST, INC.
BELLEVILLE INDUSTRIAL CENTER
BENJAMIN MOORE & COMPANY
BEROL CORPORATION
B-LINE TRUCKING, INC.
BORDEN & REMINGTON CORP.
C.S. OSBORNE & CO.
CAMBPELL FOUNDRY COMPANY
CASCHEM, INC.
CBS CORPORATION
CELANESE LTD.
CHEMICAL COMPOUNDS INC.
CHEMTURA CORPORATION
CLEAN EARTH OF NORTH JERSEY, INC.
COSMOPOLITAN GRAPHICS CORPORATION
CIBA CORPORATION
COLTEC INDUSTRIES INC.
COLUMBIA TERMINALS, INC.
COMO TEXTILE PRINTS, INC.
CONAGRA PANAMA, INC.
CONOPCO, INC.

CONSOLIDATED RAIL CORPORATION
COOK & DUNN PAINT CORPORATION
COSAN CHEMICAL CORPORATION
COVANTA ESSEX COMPANY
CRODA, INC.
CRUCIBLE MATERIALS CORPORATION
CWC INDUSTRIES, INC.
DARLING INTERNATIONAL, INC.
DAVANNE REALTY CO.
DELEET MERCHANDISING CORPORATION
DELVAL INK AND COLOR, INCORPORATED
DILORENZO PROPERTIES COMPANY, L.P.
E.I. DU PONT DE NEMOURS AND COMPANY
EASTMAN KODAK COMPANY
EDEN WOOD CORPORATION
ELAN CHEMICAL COMPANY, INC.
EM SERGEANT PULP & CHEMICAL CO.
EMERALD HILTON DAVIS, LLC
ESSEX CHEMICAL CORPORATION
EXXON MOBIL
F.E.R. PLATING, INC.
FINE ORGANICS CORPORATION
FISKE BROTHERS REFINING COMPANY
FLEXON INDUSTRIES CORPORATION
FLINT GROUP INCORPORATED
FORT JAMES CORPORATION
FOUNDRY STREET CORPORATION
FRANKLIN-BURLINGTON PLASTICS, INC.
GARFIELD MOLDING COMPANY, INC.
GENERAL CABLE INDUSTRIES, INC.
GENERAL DYNAMICS CORPORATION
GENERAL ELECTRIC COMPANY
GENTEK HOLDING LLC
GIVAUDAN FRAGRANCES CORPORATION
G.J. CHEMICAL CO.
GOODY PRODUCTS, INC.
GORDON TERMINAL SERVICES CO. OF NJ, INC.
HARRISON SUPPLY COMPANY
HARTZ MOUNTAIN CORPORATION
HAVENICK ASSOCIATES, LP
HEXCEL CORPORATION
HEXION SPECIALTY CHEMICALS, INC.
HOFFMANN-LA ROCHE INC.
HONEYWELL INTERNATIONAL INC.
HOUGHTON INTERNATIONAL INC.
HUDSON TOOL & DIE COMPANY, INC.

HY-GRADE ELECTROPLATING CO.
ICI AMERICAS INC.
INNOSPEC ACTIVE CHEMICALS LLC
INX INTERNATIONAL INK CO.
ISP CHEMICALS INC.
ITT CORPORATION
KEARNY SMELTING & REFINING CORP.
KAO BRANDS COMPANY
KOEHLER-BRIGHT STAR, INC.
LINDE, INC.
LUCENT TECHNOLOGIES, INC.
MACE ADHESIVES & COATINGS COMPANY, INC.
MALLINCKRODT INC.
MERCK & CO., INC.
METAL MANAGEMENT NORTHEAST, INC.
MI HOLDINGS, INC.
MILLER ENVIRONMENTAL GROUP, INC.
MORTON INTERNATIONAL, INC.
NL INDUSTRIES, INC.
NAPPWOOD LAND CORPORATION
NATIONAL FUEL OIL, INC.
NATIONAL-STANDARD, LLC
NELL-JOY INDUSTRIES, INC.
NESTLE U.S.A., INC.
NEW JERSEY TRANSIT CORPORATION
NEWS AMERICA, INC.
NEWS PUBLISHING AUSTRALIA LIMITED
NORPAK CORPORATION
NOVELIS CORPORATION
ORANGE AND ROCKLAND UTILITIES, INC.
OTIS ELEVATOR COMPANY
PRC-DESOTO INTERNATIONAL, INC.
PASSAIC PIONEERS PROPERTIES COMPANY
PFIZER INC.
PHARMACIA CORPORATION
PHELPS DODGE INDUSTRIES, INC.
PHILBRO, INC.
PITT-CONSOL CHEMICAL COMPANY
PIVOTAL UTILITY HOLDINGS, INC.
PPG INDUSTRIES, INC.
PRC-DESOTO INTERNATIONAL, INC.
PRAXAIR, INC.
PRECISION MANUFACTURING GROUP, LLC
PRENTISS INCORPORATED
PROCTOR & GAMBLE MANUFACTURING
COMPANY

PRYSMIAN COMMUNICATIONS CABLES AND
SYSTEMS USA, LLC
PSEG FOSSIL LLC
PUBLIC SERVICE ELECTRONIC AND GAS
COMPANY
PURDUE PHARMA TECHNOLOGIES, INC.
QUALA SYSTEMS, INC.
QUALITY CARRIERS, INC.
RECKITT BENCKISER, INC.
REICHHOLD, INC.
REVERE SMELTING & REFINING CORPORATION
REXAM BEVERAGE CAN COMPANY
ROMAN ASPHALT CORPORATION
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP
R.T. VANDERBILT COMPANY, INC.
RUTHERFORD CHEMICALS LLC
S&A REALTY ASSOCIATES, INC.
SCHERING CORPORATION
SEQUA CORPORATION
SETON COMPANY
SIEMENS WATER TECHNOLOGIES CORP.
SINGER SEWING COMPANY
SPECTRASERV, INC.
STWB, INC.
SUN CHEMICAL CORPORATION
SVP WORLDWIDE, LLC
TATE & LYLE INGREDIENTS AMERICAS INC.
TEVA PHARMACEUTICALS USA, INC.
TEVAL CORP.
TEXTRON INC.
THE DIAL OCRPORATION
THE DUNDEE WATER POWER AND LAND
COMPANY
THE NEWARK GROUP, INC.
THE OKONITE COMPANY, INC.
THE SHERWIN-WILLIAMS COMPANY
THE STANLEY WORKS
THE VALSPAR CORPORATION
THIRTY-THREE QUEEN REALTY INC.
THREE COUNTY VOLKSWAGEN CORPORATION
TIDEWATER BALING CORP.
TIFFANY & CO.
TIMCO, INC.
TRIMAX BUILDING PRODUCTS, INC.
TROY CHEMICAL CORPORATION, INC.
UNIVERSAL OIL PRODUCTS COMPANY

V. OTTILIO & SONS, INC.
VELSICOL CHEMICAL CORPORATION
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.
VERTELLUS SPECIALTIES INC.
VITUSA CORP.
VULCAN MATERIALS COMPANY
W.A.S. TERMINALS CORPORATION
W.A.S. TERMINALS, INC.
W.C. INDUSTRIES
WHITTAKER CORPORAITON
WIGGINS PLASTICS, INC.
ZENECA INC.

Third-Party Defendants.

**THIRD-PARTY DEFENDANT CBS CORPORATION'S ANSWER AND AFFIRMATIVE
DEFENSES TO MAXUS ENERGY CORPORATION'S AND TIERRA SOLUTIONS,
INC.'S THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant CBS Corporation ("CBS"), by and through its undersigned counsel, and in accordance with Case Management Order V (April 16, 2009) ("CMO V") hereby answers the Third-Party Complaint "B" of Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs") as follows:

GENERALLY

CBS denies each and every allegation contained in Third-Party Complaint "B" that is not otherwise herein addressed, including without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "B".

PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

1-15. CBS responds that no answer is required to paragraphs 1-15 pursuant to CMO V.

THE PARTIES

Third-Party Plaintiffs

(Paragraphs 16 through 18)

16-18. CBS responds that no answer is required to paragraph 16-18 pursuant to CMO V.

Third-Party Defendants

(Paragraphs 19 through 210)

To the extent that the allegations in paragraphs 19 through 210 relate to other parties, no response is required pursuant to CMO V.

52. Admitted.

210. The allegations in paragraph 210 constitute conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 210 is denied.

DEFINITIONS

211-236. CBS responds that no answer is required to paragraphs 211 through 236 pursuant to CMO V.

FACTUAL ALLEGATIONS

To the extent that the allegations in paragraph 237 through 3445 relate to other parties, no response is required pursuant to CMO V.

2620. After reasonable investigation, CBS is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in the first sentence of paragraph 2620 and, as such, that allegation is denied. With respect to the allegation in the second sentence of paragraph 2620, CBS cannot reasonably admit or deny that allegation given the dimensions of the Westinghouse Orange Street Site, the length of the Passaic River and the absence of any reference points for the approximate distance alleged in the second sentence of

this paragraph. CBS does admit, however, that the Westinghouse Orange Street Site never was located adjacent to the Passaic River.

2621. CBS admits the allegations in the first four sentences of paragraph 2621, except that Westinghouse's original corporate name was Westinghouse Electric Manufacturing Company. The allegation in the fifth sentence of this paragraph constitutes a conclusion of law to which no response is required.

2622. The allegations contained in paragraph 2622 are admitted in part and denied in part. CBS admits that Westinghouse Electric Corporation owned and operated a manufacturing facility located at 95 Orange Street in Newark, Essex County, New Jersey at which Westinghouse manufactured or assembled various electric relay instruments or components. CBS also admits that, after additions to the building over time, portions of the manufacturing facility contained four stories and the entire facility covered approximately one city block. The remainder of the allegations in paragraph 2622 are denied because, after reasonable investigation, CBS is without knowledge or information sufficient to form a belief as to the truth of those remaining allegations. CBS admits, however, that in response to a Request for Information received from the U.S. EPA under Section 104(e) of CERCLA, Westinghouse submitted some historical documents indicating that certain of the operations identified in this paragraph may have taken place at some time during Westinghouse's ownership and operation of the Orange Street Site.

2623. The allegations in paragraph 2623 that Westinghouse stored or used Hazardous Substances at the Westinghouse Orange Street Site constitute conclusions of law to which no response is required. To the extent a response is required, the allegations contained in paragraph 2623 are denied because CBS is without knowledge or information sufficient to form

a belief as to the truth of these allegations. CBS admits, however, that in response to a Request for Information received from the U.S. EPA under Section 104(e) of CERCLA, Westinghouse submitted some historical documents listing some of the compounds identified in this paragraph as compounds that may have been used in certain manufacturing or other processes some time during Westinghouse's ownership and operation of the Orange Street Site.

2624. CBS denies the allegations contained in the first sentence of this paragraph. The allegation that Hazardous Substances were discovered in soil and buildings at the Orange Street Site constitutes a conclusion of law to which no response is required. CBS admits that a small number of samples from concrete and wood flooring at the Westinghouse Orange Street Site taken after the date of the sale of that Site in 1983, indicated the presence of polychlorinated biphenyls in those samples. CBS denies the allegations contained in the third sentence of this paragraph.

2625. The allegations contained in paragraph 2625 are denied because CBS is without knowledge or information sufficient to form a belief as to the truth of those allegations.

2626. The allegations contained in paragraph 2626 are admitted in part and denied in part. CBS admits that, at the time of Westinghouse's sale of the Westinghouse Orange Street Site in 1983, Westinghouse had received an industrial sewer connection permit issued by the Passaic Valley Sewage Commission ("PVSC"). The allegation that Westinghouse discharged Hazardous Substances into the Passaic River and/or the combined sanitary-storm sewer constitutes a conclusion of law to which no response is required. To the extent a response may be required, CBS denies that the Westinghouse Orange Street Site discharged Hazardous Substances directly into the Passaic River, and is without knowledge or information sufficient to

form a belief as to the truth of the allegation that Westinghouse discharged Hazardous Substances from the Westinghouse Orange Street Site to the combined sanitary-storm sewer.

2627. The allegation in paragraph 2627 that Hazardous Substances were detected in the effluent discharged by Westinghouse constitutes a conclusion of law to which no response is required. The remaining allegations contained in paragraph 2627 are admitted in part and denied in part. CBS admits that in response to a Request for Information received from the U.S. EPA under Section 104(e) of CERCLA, Westinghouse submitted some historical reports dated in 1972 and 1981 containing analytical results for certain water samples at the Westinghouse Orange Street Site. Those documents, being in writing, speak for themselves. The remaining allegations in this paragraph are denied because the referenced environmental control survey dated June 9, 1980, being in writing, speaks for itself.

2628. The allegation in paragraph 2628 that Westinghouse discharged Hazardous Substances from the Orange Street Site constitutes a conclusion of law to which no response is required. To the extent a response is required, the allegations in paragraph 2628 are denied because CBS is without knowledge or information sufficient to form a belief as to the truth of those allegations.

2629. Admitted.

2630. The allegations in paragraph 2630 are admitted in part and denied in part. CBS admits that EPA sent a general notice letter to Westinghouse Electric Corporation on or about September 15, 2003 notifying Westinghouse of potential liability for Response Costs related to the Lower Passaic River Study Area. The allegation that the notice letter was the result of the Release of Hazardous Substances from the Orange Street Site constitutes a conclusion of law to which no response is required. To the extent a response is required, CBS denies that it is liable

for any such Response Costs or that any response activities in the Lower Passaic River Study Area are the result of the Release of any Hazardous Substances from the Westinghouse Orange Street Site.

2631. The allegations in paragraph 2631 contain conclusions of law to which no response is required.

FIRST COUNT

(New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a))

3446. CBS incorporates paragraphs 1 through 3445 of this Answer as though fully set forth herein.

3447. The allegations contained in paragraph 3447 constitute conclusions of law to which no response is required. To the extent that a response is deemed necessary, CBS denies the allegations relating to it in paragraph 3447. CBS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3447 as they relate to other Third-Party Defendants.

3448. The New Jersey Spill Compensation and Control Act, N.J.S.A.58:10-23.11f.a.(2)(a), is a written statute that speaks for itself, and the allegations in paragraph 3448 are denied to the extent that they inaccurately state or purport to interpret or paraphrase the same.

3449. The allegations contained in paragraph 3449 constitute conclusions of law to which no response is required. To the extent that a response is deemed necessary, CBS denies the allegations relating to it in paragraph 3449. CBS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3449 as they relate to other Third-Party Defendants.

3450. The allegations contained in paragraph 3450 constitute conclusions of law to which no response is required. To the extent that a response is deemed necessary, CBS is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3450.

3451. The allegations contained in paragraph 3451 constitute conclusions of law to which no response is required. To the extent that a response is deemed necessary, CBS denies the allegations relating to it in paragraph 3451. CBS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3451 as they relate to other Third-Party Defendants.

WHEREFORE, CBS demands judgment in its favor and against the Third-Party Plaintiffs, together with costs and such other and further relief as the Court deems proper.

SECOND COUNT

(Statutory Contribution)

3452. CBS incorporates paragraphs 1 through 3451 of this Answer as though fully set forth herein.

3453. The allegations contained in paragraph 3453 constitute conclusions of law to which no response is required. To the extent that a response is deemed necessary, CBS denies the allegations relating to it in paragraph 3453. CBS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3453 as they relate to other Third-Party Defendants.

WHEREFORE, CBS demands judgment in its favor and against the Third-Party Plaintiffs, together with costs and such other and further relief as the Court deems proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Third-Party Complaint is barred in whole or in part as it fails to state a cause of action against CBS upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

CBS is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. (“Spill Act”).

THIRD AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (“WPCA”).

FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have no Spill Act claim against CBS because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have no right of contribution against CBS under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs’ claims are barred, in whole or in part, by the entire controversy doctrine.

SEVENTH AFFIRMATIVE DEFENSE

To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue CBS under that statute.

EIGHTH AFFIRMATIVE DEFENSE

One or both of the Third-Party Plaintiffs do not have standing to sue.

NINTH AFFIRMATIVE DEFENSE

The claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

TENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are mere volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief from CBS. Consequently, the claims in the Third-Party Complaint are barred, in whole or in part.

TWELFTH AFFIRMATIVE DEFENSE

The claims brought by Third-Party Plaintiffs reflect damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

THIRTEENTH AFFIRMATIVE DEFENSE

CBS cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by CBS that arises out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey, the Passaic Valley Sewage Authority and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities ("applicable Environmental Laws").

FOURTEENTH AFFIRMATIVE DEFENSE

At common law, CBS held, and still holds, an interest allowing it, along with all other citizens, the reasonable use of assets held for the benefit of the public by the State of New Jersey under the Public Trust Doctrine. CBS has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets. As a matter of law, Third-Party Plaintiffs' claims are derivative of, and cannot be any greater than, the claims that the State of New Jersey has or would have against CBS directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

The State of New Jersey is legally barred from asserting direct claims against CBS for the damages sought in its Amended Complaint. Consequently, all claims that are or may be

derivative of the State of New Jersey's claims are barred as to CBS as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

The Third-Party Complaint is barred and/or constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

SEVENTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims asserted against CBS in the Third-Party Complaint are barred because at all relevant times CBS exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom CBS had no control, whether by, in whole or in part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

NINETEENTH AFFIRMATIVE DEFENSE

The claims set forth in the Third-Party Complaint are barred in whole or in part by the doctrine of preemption.

TWENTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by CBS.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against CBS are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or equitable doctrines of laches and estoppel.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and/or assumption of risk.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible of performance; (2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against CBS are subject to setoff and recoupment and therefore must be reduced accordingly.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

CBS did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation, Third-Party Plaintiffs have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred because neither they nor Plaintiffs have incurred "costs of restoration and replacement . . . of any natural resources damaged or destroyed by a discharge" under the Spill Act.

TWENTY-NINETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief cannot be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the “Newark Bay Complex,” as defined in Plaintiffs’ Second Amended Complaint.

THIRTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs’ claims are not ripe for adjudication, *inter alia*, because Third-Party Plaintiffs have a joint liability to the Plaintiffs and have not paid and will not pay more than their fair or equitable share of the liability.

THIRTY-FIRST AFFIRMATIVE DEFENSE

CBS denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom CBS exercised no control and for whose conduct CBS was not responsible.

THIRTY-SECOND AFFIRMATIVE DEFENSE

If Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiffs' agents or employees. In the event that Third-Party Plaintiffs are found to have sustained any injury and are entitled to damages, Third-Party Plaintiffs' recovery against CBS, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or its agents or employees.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Although CBS denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, CBS is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to Third-Party Plaintiffs.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent that the conduct of CBS alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with

or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

The disposal of waste, if any, which allegedly originated from CBS, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements for which CBS cannot be found retroactively liable.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

The damages or other relief that Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

THIRTY-NINETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred due to their own conduct unilaterally, and without notice to CBS, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

FORTIETH AFFIRMATIVE DEFENSE

CBS's liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v United States, et al.*, 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs cannot assert contribution claims against CBS because the discharges for which the Plaintiffs are seeking relief are different from CBS's alleged discharges.

FORTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant(s) are not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and do not share a common liability to the State of New Jersey.

FORTY-THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent they seek to hold CBS liable, in contribution, for any claims for which it would be a violation of public policy to hold CBS liable, including but not limited to punitive damages and penalties.

FORTY-FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, because no actions or inactions by CBS have resulted in any permanent impairment or damage to a natural resource.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against CBS are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against CBS pertaining to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their

contribution claims against CBS. Examples of legal extinguishments that are or may be applicable to CBS including, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to CBS;
- B. Any settlement or other compromise between Plaintiffs and CBS;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against CBS;
- D. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in the Third-Party Complaint) in a prior litigation between Plaintiffs and CBS, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or
- E. Any issuance by Plaintiffs to CBS, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FORTY-SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred because the relief sought against CBS, were it claimed directly by Plaintiffs, would amount to a "taking" of CBS's property in violation of its constitutional rights to due process and/or in violation of its rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 *et seq.*

FORTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with CBS's responsibilities, if any, to conduct ongoing environmental cleanups under oversight of the Plaintiffs at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against CBS, thereby exposing CBS to

inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTY-EIGHTH AFFIRMATIVE DEFENSE

To the extent CBS is acting or has acted to conduct environmental cleanup at site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against CBS, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTY-NINETH AFFIRMATIVE DEFENSE

Without admitting liability, CBS alleges that if it is found to have been engaged in any of the activities alleged in the Third-Party Complaint, such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

FIFTIETH AFFIRMATIVE DEFENSE

CBS incorporates by reference any affirmative defense asserted by other parties in this action to the extent such affirmative defenses are defenses to Third-Party Plaintiffs' claims and do not impose liability on CBS.

FIFTY-FIRST AFFIRMATIVE DEFENSE

CBS reserves the right to assert and hereby invoke each and every Environmental Law defense that may be available during the course of this action.

COUNTERCLAIMS, CROSS-CLAIMS, THIRD/FOURTH PARTY CLAIMS

Counterclaims, cross-claims, third-party claims and fourth-party claims are expressly reserved pursuant to CMO V. Therefore, CBS is not required to assert such claims at this time.

Wolff & Samson PC
Attorneys for Third-Party Defendant,
CBS Corporation

By _____

Dated: February 12, 2010

RULE 4:5-1 CERTIFICATION

I hereby certify that this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding and I know of no other parties who should be joined in this action pursuant to R. 4:28 as it is the legal position of CBS Corporation, that liability of a third-party defendant for the claims set forth in Third-Party Complaint "B", if any, is several. However, should the Court determine that the potential liability of a third-party defendant, if any, is joint and several for the claims set forth in Third-Party Complaint "B", then CBS Corporation states that there are other parties that may have discharged Hazardous Substances into the Newark Bay Complex contributing to the damages alleged by Defendants/Third-Party Plaintiffs. The identity of all known parties believed to have discharged Hazardous Substances will be identified in accordance with the procedures set forth in Case Management Order V. Likewise, additional discovery or investigation may identify additional parties to be joined in the litigation.

WOLFF & SAMSON PC
Attorneys for Third-Party Defendant,
CBS Corporation

By

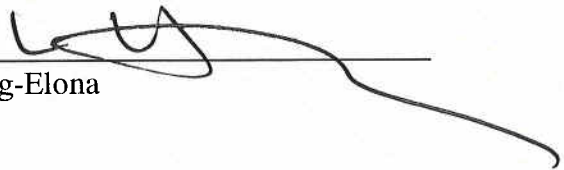


LEE HENIG-ELONIA

Dated: 2.12.10

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing CBS Corporation's Answer to Third-Party Complaint "B" was filed with the Clerk of Court, Superior Court of New Jersey, Essex County, by hand delivery and was served upon all parties which have consented to electronic service by posting to <http://njdepvocc.sfile.com> of this 12 day of Feb., 2010. All other Counsel of Record were served via first class, regular mail.



Lee Henig-Elona

Dated: 2.12.10