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Attorneys for Third party Defendant Deleet Merchandising Corp.

Our File No. 71156 MDE

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

AND

MAXUS ENERGY CORPORATION AND
TIERRA SOLUTIONS, INC.,

Third Party Plaintiffs

V.

3M COMPANY, AC.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.,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:ESSEX COUNTY
DOCKET NO.: ESX-L-9868-05 (PASR)

Civil Action

**THIRD PARTY DEFENDANT,
DELEET MERCHANDISING
CORPORATION'S ANSWER,
SEPARATE DEFENSES AND
CROSSCLAIMS FOR CONTRIBUTION
AND INDEMNIFICATION AND
COUNTERCLAIM TO
DEFENDANT/THIRD PARTY
PLAINTIFFS' THIRD PARTY
COMPLAINT "B"**

AMERICAN INKS AND COATINGS
CORPORATION,
APEXICAL, INC.,
APOLAN INTERNATIONAL, INC.,
ARKEMA, INC.,
ASHLAND 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.,
CAMPBELL FOUNDRY COMPANY,
• CASCHEM, INC.,
CBS CORPORATION,
CELANESE LTD.,
CHEMICAL COMPOUNDS INC.,
CHEMTURA CORPORATION,
CLEAN EARTH OF NORTH JERSEY,
INC.,
COSMOPOLITAN GRAPHICS
CORPORATION,
CIDA 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,
COY ANT A ESSEX COMPANY,
CRODA, INC.,
CRUCIDLE MATERIALS
CORPORATION,
CURTISS-WRIGHT CORPORATION,
CWC INDUSTRIES, INC.,
DARLING INTERNATIONAL, INC.,

DAV ANNE 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 SERVICE CO.
OF N.J., INC.,
HARRISON SUPPLY COMPANY,
HARTZ MOUNTAIN CORPORATION,
HAVENICK ASSOCIATES L.P.,
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.,
N L 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,
NORP AK 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-CON SOL CHEMICAL COMPANY,
PIVOTAL UTILITY HOLDINGS, INC.,
PPG INDUSTRIES, INC.,
PRC-DESOTO INTERNATIONAL, INC.,
PRAXAIR, INC.,
PRECISION MANUFACTURING
GROUP, LLC,

PRENTISS INCORPORATED,
PROCTER & GAMBLE
MANUFACTURING COMPANY,
PRYSMIAN COMMUNICATIONS
CABLES AND
SYSTEMS USA LLC,
PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC 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.,
TEV A PHARMACEUTICALS USA,
INC.,
TEV AL CORP.,
TEXTRON INC.,
THE DIAL CORPORATION,
THE DUNDEE WATER POWER AND
LAND COMPANY,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE SHERWIN-WILLIAMS COMPANY,
THE STANLEY WORKS,
THE VAL SPAR CORPORATION,
THIRTY -THREE QUEEN REALTY
INC.,
THREE COUNTY VOLKSWAGEN

CORPORATION,
TIDEWATER BALING CORP.,
TIFFANY & CO.,
TIM CO, 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. VERTELLUS SPECIALTIES INC.,
VITUSA CORP.,
VULCAN MATERIALS COMPANY,
WAS. TERMINALS CORPORATION,
WAS. TERMINALS, INC.,
W.C. INDUSTRIES,
WHITTAKER CORPORATION,
WIGGINS PLASTICS, INC.,
ZENECA INC.,

Third Party Defendants

Third Party Defendant, Deleet Merchandising Corporation, by way of Answer to the Third Party Complaint filed by Defendant/Third Party Plaintiffs, Maxus Energy Corporation and Tierra Solutions, Inc. says:

AS TO THE PROCEDURAL BACKGROUND

1. Third Party Defendant Deleet Merchandising Corporation neither admits nor denies the statements and/or allegations contained in paragraphs 1-15 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

AS TO THE PARTIES

2. Third Party Defendant Deleet Merchandising Corporation neither admits nor denies the statements and/or allegations contained in paragraphs 16-74 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

3. Third Party Defendant Deleet Merchandising Corporation admits the allegations contained in paragraph 75 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc.

4. Third Party Defendant Deleet Merchandising Corporation neither admits nor denies the statements and/or allegations contained in paragraphs 76-210 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

AS TO THE DEFINITIONS

5. Third Party Defendant Deleet Merchandising Corporation neither admits nor denies the statements and/or allegations contained in paragraphs 211-236 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra

Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

AS TO THE FACTUAL ALLEGATIONS

6. Third Party Defendant Deleet Merchandising Corporation neither admits nor denies the statements and/or allegations contained in paragraphs 237-3400 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. because paragraphs 237-3400 do not relate to Third Party Defendant Deleet Merchandising. Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. are left to their proofs thereof.

7. Third Party Defendant Deleet Merchandising Corporation admits the statements and/or allegations contained in paragraph 3401 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc.

8. Third Party Defendant Deleet Merchandising Corporation neither admits nor denies the statements and/or allegations contained in paragraph 3402 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

9. Third Party Defendant Deleet Merchandising Corporation admits that it purchased the property. Third Party Defendant Deleet

Merchandising Corporation can neither admit nor deny the remaining statements and/or allegations contained in paragraph 3403 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

10. Third Party Defendant Deleet Merchandising Corporation neither admits nor denies the statements and/or allegations contained in paragraphs 3404-3443 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

11. Third Party Defendant Deleet Merchandising Corporation denies the statement and/or allegation contained in paragraph 3444 of the Amended Complaint filed by Defendant/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc.

12. Third Party Defendant Deleet Merchandising Corporation neither admits nor denies the statements and/or allegations contained in paragraph 3445 of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

AS TO COUNT ONE

13. Third Party Defendant Deleet Merchandising Corporation denies the statements and/or allegations contained in Count One of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

AS TO COUNT TWO

14. Third Party Defendant Deleet Merchandising Corporation denies the statements and/or allegations contained in Count Two of the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and leaves Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to their proofs thereof.

WHEREFORE; Third Party Defendant Deleet Merchandising Corporation hereby demands judgment dismissing the Amended Complaint filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, together with attorney's fees and costs.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Third Party Defendant Deleet Merchandising Corporation entered into and was a signatory in a settlement and release agreement (hereinafter the "Agreement") in or about December, 2005. Plaintiff

herein, the New Jersey Department of Environmental Protection (hereinafter the "NJDEP"), was also a party and signatory to said Agreement. The prosecution of this Third Party Complaint against Deleet is barred by said Agreement. Specifically, the NJDEP agreed that if Deleet is joined in a subsequent action brought by the NJDEP to recover costs or damages for matters addressed in said Agreement, the NJDEP will require, in any settlement that it reaches with any person or entity, a provision that such person or entity will not seek and by such settlement thereby waives all rights of contribution from Deleet. The NJDEP further promised that if any subsequent action commenced by the NJDEP results in a judgment or award that will subject Deleet to a contribution award for any of the matters addressed in said Agreement, the NJDEP will not collect that portion of the judgment or award that is assessed against Deleet in such subsequent action.

SECOND SEPARATE DEFENSE

Plaintiff's Complaint is barred by application of the entire controversy doctrine.

THIRD SEPARATE DEFENSE

This third party defendant is entitled to a setoff and/or reduction of any damage award pursuant to N.J.S.A. 2A:15-97 et seq.

FOURTH SEPARATE DEFENSE

Any and all claims for the plaintiff and/or third party plaintiffs are barred by reason of lack of jurisdiction over the third-party defendant due to insufficiency of service of process.

FIFTH SEPARATE DEFENSE

Plaintiff's Complaint and further the Third-Party Complaint wherein Deleet Merchandising Corporation is named, is barred in whole or in part by the doctrine of waiver and estoppel.

SIXTH SEPARATE DEFENSE

Plaintiff's Complaint herein, nor the third party complaint fail to state any facts that justify the imposition of vicarious liability upon this third-party defendant.

SEVENTH SEPARATE DEFENSE

The third-party defendant herein, Deleet Merchandising Corporation, is entitled to a credit and/or setoff from the plaintiff and/or other named defendants and/or co-defendants.

EIGHTH SEPARATE DEFENSE

This third-party defendant specifically reserves and reasserts its rights to plead other defenses as discovery proceeds.

NINTH SEPARATE DEFENSE

Plaintiffs claim and third-party plaintiff's claim is barred as against public policy in the State of New Jersey.

TENTH SEPARATE DEFENSE

Plaintiff's Complaint and therefore the Third-Party Complaint is barred by the doctrine of res judicata.

ELEVENTH SEPARATE DEFENSE

Plaintiff's claim in this matter is barred by the applicable statute of limitations.

TWELFTH SEPARATE DEFENSE

This third-party defendant, Deleet Merchandising Corporation, has paid all monies due to plaintiff and, accordingly, the Complaint and Third-Party Complaint should be dismissed and plaintiff's claim as well as defendant's third-party plaintiff's claim is barred by the doctrine of accord and satisfaction.

THIRTEENTH SEPARATE DEFENSE

This third-party defendant, Deleet Merchandising Corporation, has no legal liability to the demands and claims of the plaintiff, nor to the claims of third-party plaintiff.

FOURTEENTH SEPARATE DEFENSE

The plaintiff's claim and thus third-party plaintiff's claim against this third-party defendant, Deleet Merchandising Corporation, is barred by the doctrine of release and thus plaintiffs as well as third-party plaintiff's rights have been extinguished.

FIFTEENTH SEPARATE DEFENSE

The prior settlement with the NJDEP bars the Third Party Complaint against this defendant.

SIXTEENTH SEPARATE DEFENSE

This defendant reserves and reasserts its right to file cross claims and counterclaims as is permitted by the court as outlined in Case Management Order V.

SEVENTEENTH SEPARATE DEFENSE

The Third-party complaint "B" is barred in whole or in part as it fails to state a cause of action against Deleet upon which relief can be granted.

EIGHTEENTH SEPARATE DEFENSE

The claims of the Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act.

NINETEENTH SEPARATE DEFENSE

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

TWENTIETH SEPARATE DEFENSE

The Third-Party Plaintiffs have no right of contribution against Deleet under the Spill Act.

TWENTY-FIRST SEPARATE DEFENSE

The claims brought by Third-Party Plaintiffs reflect damages that are speculative and unreasonable and not permitted under the Spill Act.

TWENTY-SECOND SEPARATE DEFENSE

Deleet can not be required to pay Third-Party Plaintiff's damages or other claims based on the actions or inactions of Deleet that arise out of conduct lawfully undertaken in compliance with the permits of the state of New Jersey and other government agencies and/or in compliance with the applicable laws, regulations, directives, of any local, state, or federal agencies or entities.

TWENTY-THIRD SEPARATE DEFENSE

The claims set forth against Deleet in the Third-Party complaint "B" are barred in whole or in part by the doctrine of preemption.

TWENTY-FOURTH SEPARATE DEFENSE

At all relevant times Deleet complied with all Applicable Environmental Laws and industry standards and otherwise acted reasonably, appropriately, in good faith, and with due care for the safety of others.

TWENTY-FIFTH SEPARATE DEFENSE

The Third-Party plaintiffs have no losses proximately caused by Deleet.

TWENTY-SIXTH SEPARATE DEFENSE

The Third-Party plaintiff's claims are barred in whole or in part by the doctrine of "unclean hands".

TWENTY-SEVENTH SEPARATE DEFENSE

The Third-Party plaintiff's claims are barred in whole or in part by Third-party Plaintiffs failure to comply with the prerequisites for liability under the Spill Act including but not limited to Third Party Plaintiff's failure to incur costs authorized by the Spill Act and Third-party Plaintiff's have failed to direct clean up and removal activities in accordance with the National Contingency Plan.

TWENTH-EIGHTH SEPARATE DEFENSE

Deleet denies that Third-Party Plaintiffs have suffered any harm, however in the event they did suffer an injury or damage under the applicable Environmental Laws, such damages were caused by the intervening acts of others not under Deleet's control and therefore Deleet is not responsible.

TWENTY-NINTH SEPARATE DEFENSES

The Third-Party plaintiff's claims are barred to the extent that the conduct of Deleet which allegedly gives rise to liability under Third-Party complaint "B" is the subject of a Release, Covenant not to sue, settlement agreement, no further action determination, or other applicable document which excuses any potential liability by Deleet.

THIRTIETH SEPARATE DEFENSE

Any award to the Third-Party Plaintiff would result in unjust enrichment.

THIRTY-FIRST SEPARATE DEFENSE

Third Party Plaintiff's cannot assert can not assert claims for contribution against Deleet because the discharges for which plaintiff seeks relief are different from Deleet's alleged discharges.

THIRTY-SECOND SEPARATE DEFENSE

Third-Party plaintiffs are not permitted to seek contribution from Deleet under the Joint Tortfeasors Contribution law because Deleet is not liable for the same injury caused by Third-Party plaintiff's discharges.

THIRTY-THIRD SEPARATE DEFENSE

Deleet incorporates by reference any separate and affirmative defenses asserted by other parties in this action to the extent they are defenses to Third-Party plaintiff's complaint and do not impose liability on Deleet.

REQUEST FOR ALLOCATION PURSUANT TO RULE 4:7-5(c)

If any defendants and/or third-party defendants settle prior to verdict, this third-party defendant will seek an allocation by the fact finder of the percentage of negligence against the settling defendant and/or co-defendant. This third-party defendant will seek this allocation, whether or not defendants or third-party defendants have formally filed a crossclaim against the settling defendants. These third-party defendants will rely upon the direct examination and cross-examination of plaintiffs' expert witnesses, as well as third-party plaintiffs' expert witnesses, and any other witnesses at the time of trial, in support of this allocation and specifically reserve the right to call any and all such witnesses. All parties are being apprised of this pursuant to Rule 4:7-5 (c) and Young v. Latta, 123 N.J. 584 (1991).

METHFESSEL & WERBEL, ESQS.
Attorneys for Deleet Merchandising
Corp.

By: _____
Marc Dembling

DATED: November 10, 2009