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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,

vs.

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

Defendants.

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY, *et al.*,

Third-Party Defendants.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**REXAM BEVERAGE CAN COMPANY'S  
ANSWER AND AFFIRMATIVE  
DEFENSE TO THIRD PARTY  
COMPLAINT "B"**

NOV 20 2009

**REXAM BEVERAGE CAN COMPANY'S  
ANSWER TO MAXUS ENERGY CORPORATION'S  
AND TIERRA SOLUTIONS, INC.'S THIRD-PARTY  
COMPLAINT "B"**

Third-Party Defendant Rexam Beverage Can Company ("Rexam") by and through its undersigned counsel, and in accordance with this Court's Case Management Order V, entered April 16, 2009 ("CMO V"), without waiver of any kind, hereby answers Third-Party Complaint "B" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

**GENERALLY**

Rexam 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".

**AS TO PROCEDURAL BACKGROUND**

1.11. No response is required pursuant to CMO V.

12. Rexam is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in paragraph 12 and leaves Third-Party Plaintiffs to their proofs.

13-15. No response is required pursuant to CMO V.

**THE PARTIES**

**AS TO THE THIRD-PARTY PLAINTIFFS**

16-18. No response is required pursuant to CMO V.

**AS TO THE THIRD-PARTY DEFENDANTS**

19-163. No response is required pursuant to CMO V.

164. Rexam admits the allegations in Paragraph 164.

165-209. No response is required pursuant to CMO V.

210. Paragraph 210 states a legal conclusion as to which no response is required. To the extent a response is required, any applicable law speaks for itself, and Rexam denies any allegations in Paragraph 210 inconsistent therewith.

#### **AS TO DEFINITIONS**

211-236. No response is required pursuant to CMO V.

#### **AS TO FACTUAL ALLEGATIONS**

237-3348. No response is required pursuant to CMO V.

3349. Rexam denies the allegations of Paragraph 3349; and Rexam affirmatively states that it is not the successor to the owner or operator of a manufacturing facility in Route 31, North, in Washington, New Jersey. All other allegations of Paragraph 3349 are denied.

3350. Rexam denies the allegations of Paragraph 3350.

3351. Rexam denies the allegations of paragraph 3351.

3352-3445. No response is required pursuant to CMO V.

#### **FIRST COUNT**

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

3446. Rexam incorporates by reference its responses and denials as asserted in paragraphs 1 through 3445 as if fully set forth herein.

3447-3451. Paragraphs 3447-3451 contain Third-Party Plaintiffs' conclusions of law and therefore no answer is required. To the extent that these paragraphs are deemed to express facts, Rexam is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations and leaves Third-Party Plaintiffs to their proofs.

**WHEREFORE**, Rexam demands that Third-Party Plaintiffs' claims against it be dismissed with prejudice, and that Rexam be allowed to recover its costs, including reasonable attorneys' fees, incurred in connection with the defense of this action.

#### **SECOND COUNT**

##### **(Statutory Contribution)**

3452. Rexam incorporates by reference its responses and denials as asserted in paragraphs 1 through 3451 as if fully set forth herein.

3453. Paragraph 3453 contains the Third-Party Plaintiffs' conclusions of law and therefore no answer is required. To the extent that this paragraph is deemed to express facts, Rexam is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations and leaves Third-Party Plaintiffs to their proofs.

**WHEREFORE**, Rexam demands that Third-Party Plaintiffs' claims against it be dismissed with prejudice, and that Rexam be allowed to recover its costs, including reasonable attorneys' fees, incurred in connection with the defense of this action.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

1. The Third-Party Complaint fails to set forth a cause of action upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

2. The Third-Party Complaint is barred by the doctrine of unclean hands.

#### **THIRD AFFIRMATIVE DEFENSE**

3. The Third-Party Defendant owed no duty to the Third-Party Plaintiffs.

#### **FOURTH AFFIRMATIVE DEFENSE**

4. The damages alleged by the Third-Party Plaintiffs were caused by individuals and/or entities over which the Third-Party Defendant did not exert control.

#### **FIFTH AFFIRMATIVE DEFENSE**

5. Third-Party Plaintiffs' claims are barred, in whole or in part, by the Entire Controversy Doctrine.

#### **SIXTH AFFIRMATIVE DEFENSE**

6. Third-Party Defendant is not a discharger under N.J.S.A. 58:10-23.11 et seq. ("The Spill Act") and thus not required to contribute any funds for the clean up and removal costs alleged in the Third Party Complaint.

#### **SEVENTH AFFIRMATIVE DEFENSE**

7. 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").

#### **EIGHTH AFFIRMATIVE DEFENSE**

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

#### **NINTH AFFIRMATIVE DEFENSE**

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

#### **TENTH AFFIRMATIVE DEFENSE**

10. To the extent that the Third-Party Complaint seeks any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., the pleading is barred because Third-Party Plaintiffs have failed to establish that Third-Party Defendant has violated any statute, regulation or ordinance designed to prevent or minimize pollution, impairment or destruction of the environment to any of the properties or waterways alleged in the Third-Party Complaint.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

11. Some or all of Third-Party Plaintiffs do not have standing to sue.

#### **TWELFTH AFFIRMATIVE DEFENSE**

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

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

13. Third-Party Plaintiffs' claims are barred because they are mere volunteers for the remediation of the environmental contaminants for which they claim contribution and/or other relief.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

14. Third-Party Plaintiffs' claims are barred by Rule 4:26-1 of the New Jersey Court Rules because they are not the real parties in interest for pursuit of the claims alleged 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.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

15. The Third-Party Complaint fails to state a claim because the damages sought are speculative.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

16. Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey 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 (the "Applicable Environmental Laws").

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

17. The State of New Jersey is legally barred from asserting direct claims against Third-Party Defendant for the damages sought in its Second Amended Complaint. Consequently, all claims that are or may be derivative of the State of New Jersey's claims are barred as to the Third-Party Defendant as well, including the claims set forth in the Third-Party Complaint.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

#### **NINETEENTH AFFIRMATIVE DEFENSE**

19. The Third-Party Complaint is barred to the extent that it seeks relief for damages incurred before the effective date of the Spill Act.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

20. At all relevant times, Third-Party Defendant complied with all Applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. The claims asserted against Third-Party Defendant in the Third-Party Complaint are barred because at all relevant times Third-Party Defendant 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 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 Third-Party Defendant 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.

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

#### **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25. 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-SIXTH AFFIRMATIVE DEFENSE**

26. Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrine of "coming to the nuisance."

#### **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27. 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-EIGHTH AFFIRMATIVE DEFENSE**

28. 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-NINTH AFFIRMATIVE DEFENSE**

29. Third-Party Plaintiffs' claims are barred because the relief sought against Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

#### **THIRTIETH AFFIRMATIVE DEFENSE**

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

#### **THIRTY-FIRST AFFIRMATIVE DEFENSE**

31. 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 to, 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.



### **THIRTY-SECOND AFFIRMATIVE DEFENSE**

32. 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.

### **THIRTY-THIRD AFFIRMATIVE DEFENSE**

33. 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 to the existing parties pursuant to Rule 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.

### **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

34. 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-FIFTH AFFIRMATIVE DEFENSE**

35. Third-Party Defendant 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 the Applicable Environmental Laws, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Third-Party Defendant exercised no control and for whose conduct Third-Party Defendant was not responsible.

### **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

36. 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 Third-Party Defendant, if any, must

be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or their agents or employees.

#### **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

37. Although Third-Party Defendant denies that it is liable for the contamination described in the Third-Party Complaint, in the event it is found liable, Third-Party Defendant 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 party in this action that would be liable to Third-Party Plaintiffs.

#### **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

38. 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-NINTH AFFIRMATIVE DEFENSE**

39. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants 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 documents, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

#### **FORTIETH AFFIRMATIVE DEFENSE**

40. The disposal of waste, if any, which allegedly originated from Third-Party Defendant, 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 Third-Party Defendant cannot be found retroactively liable.

#### **FORTY-FIRST AFFIRMATIVE DEFENSE**

41. Any discharge that allegedly originated from Third-Party Defendant was investigated and remediated by a licensed professional and under the direct oversight of state and/or federal agencies with the then state of the art, the then accepted industrial practice and technology, and the then prevailing requirements for which Third-Party Defendant cannot be found retroactively liable.

#### **FORTY-SECOND AFFIRMATIVE DEFENSE**

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

#### **FORTY-THIRD AFFIRMATIVE DEFENSE**

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

#### **FORTY-FOURTH AFFIRMATIVE DEFENSE**

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

#### **FORTY-FIFTH AFFIRMATIVE DEFENSE**

45. Third-Party Defendant'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 pursuant to Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al., 556 U.S. \_\_\_\_; 129 S. Ct. 1870 (2009), and other comparable decisional law.

#### **FORTY-SIXTH AFFIRMATIVE DEFENSE**

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

#### **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

47. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant is not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and do not share a common liability with Third-Party Plaintiffs.

#### **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

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

#### **FORTY-NINTH AFFIRMATIVE DEFENSE**

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

#### **FIFTIETH AFFIRMATIVE DEFENSE**

50. 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 Third-Party Defendant are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Third-Party Defendant 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 Third-Party Defendant. Examples of legal extinguishments that are or may be applicable to Third-Party Defendant include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
- B. Any settlement or other compromise between Plaintiffs and Third-Party Defendant;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
- 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 Third-Party Defendant, 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 Third-Party Defendant, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

#### **FIFTY-FIRST AFFIRMATIVE DEFENSE**

51. Third-Party Plaintiffs' claims are barred to the extent that the relief sought by Third-Party Plaintiffs is at odds with Third-Party Defendant's responsibilities 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 Third-Party Defendant, thereby exposing Third-Party Defendant to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

#### **FIFTY-SECOND AFFIRMATIVE DEFENSE**

52. Third-Party Defendant is not the successor in interest to the owner of the facility at Route 31 North, Washington, New Jersey

#### **FIFTY-THIRD AFFIRMATIVE DEFENSE**

53. Without admitting liability, Third-Party Defendant 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.

#### **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

54. Third-Party Defendant 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 Third-Party Defendant.

#### **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

55. Third-Party Defendant reserves the right to assert and hereby invokes each and every Applicable Environmental Laws defenses that may be available during the course of this action.

#### **FIFTY-SIXH AFFIRMATIVE DEFENSE**

56. Third-Party Plaintiffs claims are barred, in whole or in part, by their failure to properly mitigate damages.

#### **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

57. Third-Party Plaintiffs' claims are barred because the relief sought against Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to a "taking" of Third-Party Defendant'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.

#### **COUNTER-CLAIMS, CROSS-CLAIMS AND THIRD/FOURTH-PARTY CLAIMS**

1. Rexam repeats and reiterates its answers and Affirmative Defenses in their entirety contained in the preceding paragraphs as though fully set forth herein.

2. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V, paragraph 6.

3. Pursuant to Rule 4:7-5(b), all counter-claims or cross-claims for statutory or common-law contribution and indemnification asserted by the other parties against Rexam whether filed in the past or in the future, are deemed denied by Rexam without the need for responsive pleadings.

#### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Michael McThomas, is hereby designated as trial counsel in the within matter.

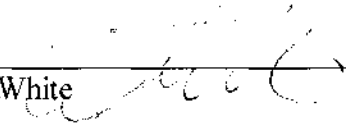
#### **CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

Pursuant to R. 4:5-1(b)(2), the undersigned hereby certifies that:

- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Since it is the legal position of the undersigned that the potential liability, if any, of a third-party defendant for the claims set forth in the Third Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that
- (c) Third-Party Plaintiffs should name the proper successor to the owner of the facility located at Route 31 North, Washington, New Jersey, Pechiney Plastics Packaging, Inc., and should dismiss Rexam Beverage Can Company; and further
- (d) In the event the Court shall determine that the potential liability of a third-party defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 20, 2009 posting by O'Melveny and Myers may constitute non-parties who should be joined in the action pursuant to R. 4:28; and
- (e) In either event, some or all of such non-parties are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

**KARAGANIS, WHITE & MAGEL LTD.**

Attorneys for Third-Party Defendant  
Rexam Beverage Can Company

  
\_\_\_\_\_  
Bruce White

**MICHAEL P MCTHOMAS PLLC**

NJ Attorneys for Third-Party Defendant  
Rexam Beverage Can Company

  
\_\_\_\_\_  
Michael P McThomas

Dated:

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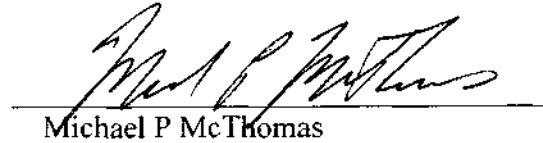
NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION, THE	:	LAW DIVISION: ESSEX COUNTY
COMMISSIONER OF THE NEW JERSEY	:	
DEPARTMENT OF ENVIRONMENTAL	:	DOCKET NO. L-9868-05 (PASR)
PROTECTION and THE ADMINISTRATOR OF	:	
THE NEW JERSEY SPILL COMPENSATION	:	CIVIL ACTION
FUND,	:	
	:	<b>CERTIFICATE OF SERVICE</b>
Plaintiffs	:	
v.	:	
	:	
OCCIDENTAL CHEMICAL	:	
CORPORATION, TIERRA SOLUTIONS,	:	
INC., MAXUS ENERGY CORPORATION,	:	
REPSOL YPF, S.A., YPF, S.A., YPF	:	
HOLDINGS, INC. and CLH HOLDINGS,	:	
INC.,	:	
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and TIERRA	:	
SOLUTIONS,	:	
INC.,	:	
Third-Party Plaintiffs,	:	
	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

NOV 20 2009

I, Michael P. McThomas, attorney-at-law in the State of New Jersey do hereby certify that on this date I caused to be filed via hand-delivery with the Clerk of Court, Essex County, and served via Email upon Counsel of Record identified in the Counsel of Record Service list



dated October 12, 2009, and by posting on the electronic platform Sfile, and by mail via first-class postage upon counsel who have not consented to electronic service, a copy of the Rexam Beverage Can Company's Answer and Affirmative Defense to Third-Party Complaint "B".



Michael P McThomas

Date: 11-20, 2009