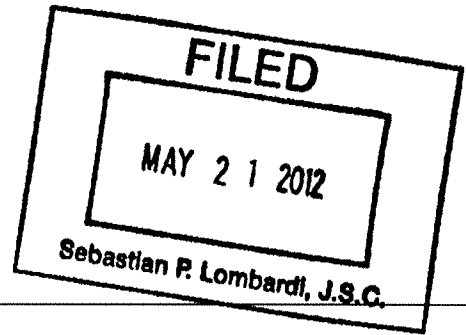


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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,

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,

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

: **ORDER REGARDING PARTIAL**
: **SUMMARY JUDGMENT ON**
: **TRACK III LIABILITY ISSUES**

THIS MATTER, having come before the Court by way of motions for partial summary judgment by Plaintiffs New Jersey Department of Environmental Protection, The Commissioner of New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (collectively, "Plaintiffs") and Defendant Occidental Chemical Corporation ("OCC") pursuant to R. 4:46-1, et seq., with regard to Plaintiffs' and OCC's claims that Maxus Energy Corporation ("Maxus") has direct liability to the Plaintiffs based on one or

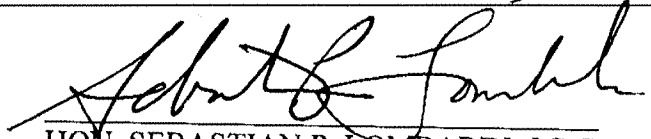
more of the theories set forth in the Court's Consent Order on Track III Trial Plan, Paragraph I.A.2; and Maxus having submitted a cross-motion for partial summary judgment; and the Court having considered the submissions in support of and opposition to each party's motion, and the arguments of counsel; and for the reasons reflected on the record on May 17, 2012,

IT IS, on this ^{AT} 27 day of May, 2012, ORDERED that

1. The motions of Plaintiffs and OCC seeking to establish that Maxus is a successor, at law or in equity, to Diamond Alkali Company, Diamond Shamrock Corporation (i.e., DSC-1/Old Diamond Shamrock), and/or Diamond Shamrock Chemicals Company ("DSCC") are hereby denied, and Maxus' cross-motion with respect thereto is hereby granted.
2. The motion of Plaintiffs seeking to establish that Maxus is the alter ego of Tierra Solutions, Inc. ("Tierra") is hereby granted and, as a result, Maxus is a person in any way responsible under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (the "Spill Act") to the same extent that Tierra is a person in any way responsible under the Spill Act, by virtue of having acquired ownership of the Lister Site parcels in 1986. Maxus' cross-motion with respect to this theory of liability is denied.
3. The motion of Plaintiffs seeking to establish that Plaintiffs are "third-party beneficiaries" of certain provisions of the 1986 Stock Purchase Agreement ("SPA") between OCC and Maxus is hereby denied, and Maxus' cross-motion related thereto is granted, provided, however, that although Plaintiffs do not have a direct claim against Maxus under the SPA, they have standing to enforce Maxus' indemnity obligations to OCC under the SPA.
4. The motion of Plaintiffs seeking to establish their right to pursue a direct action against Maxus under N.J.S.A. 58:10-23.11s is hereby denied.

MAXUS Energy Corporation is found in any way responsible under the Spill Act on facts found by Court for Maxus being alter ego of Tierra.

5. Except to the extent Maxus has been determined to be Tierra's alter ego, as provided for in Paragraph 2 hereof, Plaintiffs' and OCC's motions seeking to establish that Maxus is a person in any way responsible under the Spill Act are ^{granted} denied, and Maxus' cross-motion with respect thereto is granted. (see NJOEP's order of this date.)


HON. SEBASTIAN P. LOMBARDI, J.S.C.
SEBASTIAN P. LOMBARDI, J.C.

opposed

For reasons stated
on the record
on May 17, 2012