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September 26, 2012

VIA HAND DELIVERY

Clerk of the Court
Superior Court of New Jersey
Veterans Courthouse
50 West Market St., Room 131
Newark, NJ 07102

Re: New Jersey Department of Environmental Protection, *et al.* v.
Occidental Chemical Corporation, *et al.*
ESX-L-9868-05 (PASR)

Dear Sir/Madam:

This firm represents Defendant Occidental Chemical Corporation ("OCC") in the above referenced matter. Enclosed please find an original and two copies of OCC's Second Amended Cross-Claims, and Proof of Service. I understand there is no filing fee.

Please return one copy marked "filed" to the messenger. Thank you for your attention to this matter.

Very truly yours,

ARCHER & GREINER
A Professional Corporation

By: _____
Lindsay A. Wagner

LAW/rd
Enclosures

cc: Honorable Marina Corodemus, J.S.C. (Ret.) (via hand delivery)
Counsel for the Original Parties (via e-mail)
All Counsel of Record (via CT Summation)

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, Plaintiffs, vs. OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, MAXUS INTERNATIONAL ENERGY COMPANY, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC., YPF INTERNATIONAL S.A. (f/k/a) YPF INTERNATIONAL LTD. AND CLH HOLDINGS, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO.: ESX-L9868-05 (PASR) Civil Action **DEFENDANT OCCIDENTAL CHEMICAL CORPORATION'S SECOND AMENDED CROSS-CLAIMS**

Defendant/Cross-Claimant Occidental Chemical Corporation ("Occidental"), for its Second Amended Cross-Claims against Defendants Maxus Energy Corporation ("Maxus"), Maxus International Energy Company ("MIEC"), Tierra Solutions, Inc. ("Tierra"), Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF Holdings, Inc. ("YPFH"), YPF International S.A. (f/k/a YPF International Ltd.) ("YPFI"), and CLH Holdings ("CLHH") (collectively, the "Cross-Claim Defendants" or the "Repsol Group"), adopts and incorporates its responses to the allegations made in Plaintiffs' Third Amended Complaint (the "Complaint"), and further alleges as follows:

NATURE OF THE CROSS-CLAIMS

1. On August 27, 2010, the New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the NJDEP ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively "Plaintiffs") filed the Complaint in the present action against Occidental and the Cross-Claim Defendants. Plaintiffs allege claims arising under the New Jersey Spill Compensation and Control Act, the New Jersey Water Pollution Control Act, New Jersey Uniform Fraudulent Transfer Act, Public Nuisance Law, Trespass Law, Strict Liability Law, and Civil Conspiracy/Aiding and Abetting Law. Among other relief sought by Occidental herein, pursuant to the Stock Purchase Agreement dated September 4, 1986 (the "SPA"), described in greater detail below, Occidental is entitled to declaratory judgment that the Cross-Claim Defendants are obligated to defend, indemnify, and hold harmless Occidental for, among other liabilities, claims in respect of the Lister Site and all claims asserted in the Complaint. Further, to the extent that Plaintiffs obtain any judgment or otherwise obtain any relief against Occidental arising from the Lister Site or any or all of the claims asserted in the Complaint, Occidental is entitled to judgment against the Cross-Claim Defendants, jointly and severally, for indemnification,

contribution, recovery of costs and attorneys' fees and for other declaratory relief. Lastly, Occidental is entitled to judgment that the Cross-Claim Defendants are jointly and severally liable for all obligations of the "Seller" under the SPA. Occidental's claims are asserted herein by reason of Plaintiffs' claims against Occidental in this litigation but are not solely derivative of Plaintiffs' claims or theories of recovery. All of Occidental's claims are properly brought in this action, and this Court has general and specific personal jurisdiction over all of the Cross-Claim Defendants with respect to the Cross-Claims.

FACTUAL BASIS FOR THE CROSS-CLAIMS

OWNERSHIP AND OPERATION OF LISTER SITE

2. Diamond Alkali Company ("Diamond Alkali") was founded in 1910. In 1951, Diamond Alkali acquired Kolker Chemical Works, Inc. ("Kolker"). As part of the acquisition, Kolker transferred to Diamond Alkali a tract of land located at 80 Lister Avenue in Newark, New Jersey. From 1951 until 1967, Diamond Alkali owned and operated the chemical plant on that site (the "Lister Plant") where it manufactured pesticides and herbicides as a part of its agricultural chemical business. Some of the processes involved in these manufacturing activities purportedly formed an impurity known as "dioxin" as a by-product.

3. In 1967, Diamond Alkali merged with Shamrock Oil and Gas Company, and the merged company's name was changed to Diamond Shamrock Corporation ("Old Diamond Shamrock"). Old Diamond Shamrock continued to operate the Lister Plant until August 1969. In March 1971, Old Diamond Shamrock sold the Lister Plant to Chemicaland Corporation ("Chemicaland"), which manufactured benzyl alcohol. Upon information and belief, neither Chemicaland nor any subsequent owner or operator of the Lister Plant manufactured any dioxin-containing product at that plant.

4. In 1982, the United States Environmental Protection Agency ("EPA") initiated a National Dioxin Strategy targeting facilities that had produced certain herbicides and pesticides for soil sampling and testing for dioxin. The study produced a list of contaminated sites, including 80 Lister Avenue and the adjacent site, 120 Lister Avenue (collectively referred to in Plaintiffs' Complaint and herein as the "Lister Site"). The NJDEP subsequently issued an administrative order on June 13, 1983, requiring Old Diamond Shamrock to implement certain partial site stabilization measures designed to prevent further off-site migration of dioxin from the Lister Site.

CORPORATE REORGANIZATION OF OLD DIAMOND SHAMROCK

5. Beginning in 1983, Old Diamond Shamrock underwent a transformative corporate reorganization (the "Old Diamond Shamrock Reorganization"), accomplished through a series of coordinated and interrelated corporate formations and transactions as described below. Some of the pertinent information about the Old Diamond Shamrock Reorganization has been produced to Occidental in this action, but some such information is solely within the possession of Maxus or other Cross-Claim Defendants and has not been produced to date.

6. On or about July 14, 2003, Old Diamond Shamrock sold its then-active agricultural chemicals ("Ag Chem") business and animal health business to SDS Biotech Corporation, a newly-formed joint venture originally 50% owned by Old Diamond Shamrock. The Lister Site was part of Old Diamond Shamrock's previously discontinued operations relating to its Ag Chem business and, on information and belief, was not included in the Ag Chem business Old Diamond Shamrock sold and transferred to SDS Biotech Corporation. A few days after that transaction, on or about July 19, 2003, Old Diamond Shamrock incorporated in Delaware a new entity originally named Diamond Shamrock Corporation and

subsequently renamed Maxus Energy Corporation. After creation of the entity now known as Maxus, Old Diamond Shamrock's name was changed to Diamond Shamrock Chemicals Company ("DSCC").

7. Upon information and belief, subsequent steps in the Old Diamond Shamrock Reorganization were orchestrated and directed by Maxus and involved, among other things: (i) the creation of various drop-down subsidiaries to receive and hold the separate lines of business, and the related assets and liabilities, theretofore held and operated as business units of Old Diamond Shamrock; (ii) the creation of an entity known as Diamond Shamrock Corporate Company ("DS Corporate") to receive and hold all of the "corporate" businesses, assets and liabilities of Old Diamond Shamrock; (iii) a series of assignment and assumption transactions through which substantially all of Old Diamond Shamrock's active and discontinued businesses and the related assets and liabilities – *except* for its industrial and process chemicals business – became those of the newly-created drop-down subsidiaries; (iv) a specific assignment and assumption transaction through which, among other things, Old Diamond Shamrock's discontinued agricultural chemicals business and related assets and liabilities (including any liabilities associated with discontinued operations at the Lister Site) became those of DS Corporate; (v) conveyance of the stock of DS Corporate and other drop-down subsidiaries to Maxus, such that they became direct subsidiaries of Maxus; and (vi) the spin off and sale of certain of the drop-down subsidiaries, and ultimately the merger of others including DS Corporate (later renamed Maxus Corporate Company) into Maxus.

8. Upon information and belief, a key purpose for the Old Diamond Shamrock Reorganization was to segregate Old Diamond Shamrock's active, ongoing and valuable industrial and process chemicals business so that it could be sold to a purchaser such as Occidental. Upon information and belief, as a result of the Old Diamond Shamrock

Reorganization, and by design, (i) DSSC owned and held none of Old Diamond Shamrock's historical businesses and related assets and liabilities, *except* for the industrial and process chemicals business later sold to Occidental; and (ii) all of the assets and liabilities associated with Old Diamond Shamrock's historical Ag Chem business, including any liabilities associated with prior ownership or operation of the Lister Site, were recognized to be and to be retained as assets and liabilities of Maxus, not of DSCC.

9. Indeed, in its SEC Form 10-K filings for every year from 1983 through 1987, Maxus represented that it "was incorporated in Delaware in 1983 as the successor to various corporations, the oldest of which was founded in 1910," including Diamond Alkali and Old Diamond Shamrock.

10. In 1984, DSCC acquired 120 Lister Avenue, and in 1986 it reacquired title to 80 Lister Avenue. In August 1986, DSCC transferred ownership of the entire Lister Site to another affiliated company, Diamond Shamrock Chemical Land Holdings, Inc., now known as Tierra, and Tierra continues to own the entire Lister Site today. Upon information and belief, those transactions occurred by direction of and for the benefit of Maxus, which was responsible for the environmental response at the Lister Site as well as other discontinued Old Diamond Shamrock sites at all times after the Old Diamond Shamrock Reorganization.

11. At the time of its acquisition of title to the Lister Site, Diamond Shamrock Chemical Land Holdings, Inc., now Tierra, had actual knowledge of pre-existing discharges at the site. Diamond Shamrock Chemical Land Holdings, Inc., now Tierra, did not comply, and indeed did not attempt to comply, with the requirements of N.J.S.A. 58: 10-23g (d) (5).

THE 1986 STOCK PURCHASE AGREEMENT AND RESULTING OBLIGATIONS OF MAXUS

12. In or about 1986, Maxus (then known as Diamond Shamrock Corporation) announced its intention to sell DSCC. Maxus knew that notwithstanding the Old Diamond

Shamrock Reorganization, potential liability associated with Old Diamond Shamrock's inactive sites, discontinued operations, and related historical obligations (the "Discontinued Operations") would deter potential purchasers. Maxus thus assured prospective buyers that those liabilities would remain with Maxus, not the buyer, including:

> All litigation arising out of DSCC's manufacturing operations at 80 Lister Avenue, Newark, New Jersey, and other sites where manufacturing operations have been permanently abandoned, including claims for property damage and personal injury arising from the cleanup of such sites.

13. Occidental acquired DSCC and its active, ongoing "Chemicals Business" pursuant to the SPA, effective September 4, 1986. The "Chemicals Business" is defined in Section 2.02(b) of the SPA as "the DSCC Companies taken as a whole and the Business Units taken as a whole, and the business being conducted by them in the aggregate as of the date of this Agreement [September 4, 1986] . . . ." Under the SPA, Maxus sold all of the outstanding stock of DSCC to Oxy-Diamond Alkali Corporation, an affiliate of Occidental. Oxy-Diamond Alkali Corporation merged into Occidental on November 24, 1987, and, after a corporate name change, DSCC merged into Occidental on November 30, 1987.

14. Maxus' pre-sale acknowledgement that it, rather than DSCC or DSCC's buyer, would retain responsibility for the Ag Chem business, the Lister Site, and other Discontinued Operations, was incorporated into the SPA. Section 9.03(a) of the SPA thus required Maxus to defend, indemnify and hold harmless Occidental

> from and against any and all claims, demands or suits (by any Entity, including, without limitation, any Governmental Agency), losses, liabilities, damages, obligations, payments, costs and expenses, paid or incurred, whether or not relating to, resulting from or arising out of any Third Party claim (including, without limitation, the reasonable cost and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees in connection therewith), and whether for property damage, natural resource damage,

> bodily injury (including, without limitation, damage and injury related to products and injury to any person living or dead on the date hereof or born hereafter), governmental fines or penalties (including, without limitation, for the violation of permits), pollution, threat to the environment, environmental remediation, or otherwise (individually and collectively, "Indemnifiable Losses") relating to, resulting from or arising out of . . . (iii) any . . . Superfund Site . . . , (iv) the "Inactive Sites" . . . [and] (viii) the Historical Obligations. . . .

15. Additionally, Section 9.03(a)(iii) of the SPA requires Maxus to "indemnify, defend and hold harmless" Occidental, from and against, among other things, "any and all claims, demands, or suits . . . relating to, resulting from, or arising out of . . . any . . . Superfund Site."

16. Schedule 2.07(g) to the SPA lists fifteen Old Diamond Shamrock sites that were included on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 49 U.S.C. § 6901, *et seq.*, as of July 10, 1986. The Schedule includes three Superfund Sites in New Jersey, including "Diamond Alkali (#488)" in Newark, New Jersey. Based on the allegations in the Complaint, Plaintiffs' underlying action relates to, results from, and arises out of the Diamond Alkali (#488) Superfund Site.

17. Section 9.03(a)(iv) of the SPA contains Maxus' defense and indemnity obligations for "Inactive Sites." That provision states that Maxus must "indemnify, defend and hold harmless" Occidental, among other things, from and against "any and all claims, demands, or suits . . . relating to, resulting from, or arising out of"

> the "Inactive Sites" (which for purposes of this Agreement, shall mean those former chemical plants and commercial waste disposal sites listed on Schedule 9.03(a)(iv) and all other properties which were previously, but which, as of the Closing Date, are not owned, leased, operated or used in connection with the business or operations of any Diamond Company, including, without limitations, any of DSCC Company, or any predecessor-in-interest thereof), including, without limitations,

> any matter relating to any of the Inactive Sites for which (A) any Diamond Company (including, without limitation, any DSCC Company) on or prior to the Closing Date agreed to indemnify, defend or hold harmless any Entity, or (B) any Diamond Company may otherwise be held liable.

18. Schedule 9.03(a)(iv) to the SPA contains a list of the Inactive Sites, including numerous former Old Diamond Shamrock plant sites in the State of New Jersey. The Schedule lists a plant site located in Newark, New Jersey, which refers to the Lister Site. Based on the allegations in the Complaint, Plaintiffs' underlying action relates to, results from, and arises out of the Inactive Site of Old Diamond Shamrock in Newark, New Jersey.

19. Section 9.03(a)(viii) sets forth Maxus' obligation to indemnify Occidental for "Historical Obligations." That section states that Diamond Shamrock must "indemnify, defend and hold harmless" Occidental from and against, among other things, "any and all claims, demands, or suits . . . relating to, resulting from, or arising out of"

> the Historical Obligations and any other obligations or liabilities (absolute or contingent) of any Diamond Company (including, without limitation, any DSCC Company prior to the Closing) or any predecessor-in-interest thereof or of any DSCC Company unrelated to the Chemicals Business, including, without limitations, obligations and liabilities arising out of, resulting from or incurred in connection with, any ownership, use or operation of the business or assets of any Diamond Company other than a DSCC Company, whether before or after the Closing Date.

20. SPA Section 2.23(b) defines Historical Obligations as "those obligations, liabilities, guarantees and contingent liabilities of the DSCC Companies, or any of them, which arose prior to or in connection with the Reorganization and which relate to any business, asset or property other than those of the Chemicals Business." Under SPA Section 2.23(a), "Reorganization" means and refers to the Old Diamond Shamrock Reorganization described above.

21. Moreover, Schedule 2.23 to the SPA sets forth a description of certain specific Historical Obligations and describes by category all other Historical Obligations. Item number 12 identifies the following as Historical Obligations, among numerous other examples:

> ***All liabilities and obligations associated with the discontinued businesses of DSCC or any predecessor in interest*** (regardless of whether or not chemical, petroleum or coal related) including, without limitation, all liabilities and obligations associated with any acquisition, disposition and merger agreement relating to such discontinued businesses, including, without limitation to the following: . . ***Ag Chem*** . . . .

SPA, Section 2.23, emphasis added.

22. In addition to the requirement to defend, indemnify and hold harmless Occidental from and against liabilities associated with Historical Obligations, the SPA also mandates that Maxus use its best efforts to have Occidental released from any such liabilities. Specifically, SPA Section 12.11 provides in relevant part as follows:

> (a) [Maxus] shall, and shall cause or, in the case of less than majority owned Entities, shall use its best efforts to cause, each of the other Diamond Companies to, use its and their best efforts to obtain at the earliest practicable date, whether before or after the Closing Date, any amendments, novations, releases, waivers, consents or approvals necessary to have each of the DSCC Companies released from its obligations and liabilities under the Historical Obligations. Seller shall, and shall cause or, in the case of less than majority owned Entities, shall use its best efforts to cause, each of the other Diamond Companies to, remain in compliance with its and their respective obligations under each of the Historical Obligations to the extent any Diamond Company remains obligated or has any liabilities thereon.
>
> (b) If reasonably necessary in the circumstances, Seller's obligations to use its best efforts shall include, without limitation, providing its guarantee or the guarantee of any of the other appropriate Diamond Companies (other than the DSCC Companies) in consideration for the granting or obtaining of any such amendments, novations, releases, waivers, consents or approvals.

23. In 1987, following execution of the SPA, Diamond Shamrock Corporation changed its name to Maxus Energy Corporation. Accordingly, all of the obligations owed to Occidental under the SPA are the obligations of Maxus.

24. Indeed, Maxus' obligations to Occidental pursuant to Article IX of the SPA, as alleged above, have already been fully and finally adjudicated and determined in Occidental's favor, and against Maxus, in the action styled *Occidental Chem. Corp. v. Maxus Energy Corp.*, Cause No. 02-09156, In the District Court of Dallas County, Texas (the "Texas Litigation"). The final judgment in the Texas Litigation is entitled to full faith and credit in New Jersey and precludes Maxus from relitigating in this case its obligations to Occidental under Article IX of the SPA.

YPF AND REPSOL ACKNOWLEDGE INDEMNIFICATION OBLIGATIONS TO OCCIDENTAL

25. In 1995, YPF acquired Maxus.

26. In 1999, Repsol acquired a controlling interest in YPF.

27. YPF has consistently acknowledged the indemnification obligations owed to Occidental pursuant to the SPA. For example, YPF's 1998 Form 20-F/A discussed a 1990 consent decree that Maxus and Tierra, not Occidental, negotiated with the NJDEP relating to the Lister Site, stating:

> Construction of the final remedial action as contemplated by the consent decree is expected to cost approximately U.S. $23 million and take at least three years to complete. The work is being supervised and paid for by CLH. . . . YPF International has fully reserved the estimated costs of performing the remedial action plan . . . .

That public filing also stated:

> Laws and regulations relating to health and environmental quality in the United States. . . in which YPF International operates, affect nearly all of the operations of YPF International. . . . At December 31, 1998, reserves for the environmental contingencies discussed herein totaled

> approximately U.S. $123 million. Management of YPF International believes it has adequately reserved for all environmental contingencies which are probable and can be reasonably estimated . . . .

28. YPF also acknowledged the indemnification obligations to Occidental in its 2006 Form 20-F filing, stating:

> In connection with the sale of Diamond Shamrock Chemicals Company ("Chemicals") to a subsidiary of [Occidental] in 1986, Maxus Energy Corporation ("Maxus") agreed to indemnify Chemicals and Occidental from and against certain liabilities relating to the business and activities of Chemicals prior to the September 4, 1986 Closing Date (the "Closing Date"), including certain environmental liabilities relating to certain chemical plants and waste disposal sites used by Chemicals prior to the Closing Date.

29. In its March 10, 2008 Amendment No. 1 to Form F-3 filing, YPF refers to the current litigation, observing that "Tierra assumed essentially all of Maxus' aforesaid indemnity obligations to [Occidental]. . . ."

30. Similarly, Repsol has acknowledged the indemnification obligations owed to Occidental pursuant to the SPA. For example, Repsol's December 31, 2006 Form 20-F states:

> In connection with the sale of Maxus' former chemical subsidiary, Diamond Shamrock Chemicals Company ("Chemicals") to Occidental Petroleum Corporation (together with its subsidiary Occidental Chemical Corporation, "Occidental") in 1986, Maxus executed a document whereby it agreed to indemnify Chemicals and Occidental from and against certain liabilities relating to the business and/or activities of Chemicals prior to the September 4, 1986 closing date (the "Closing Date"), including certain environmental liabilities relating to certain chemical plants and waste disposal sites used by Chemicals prior to the Closing Date. Tierra assumed essentially all of Maxus' aforesaid indemnity obligations to Occidental in respect of Chemicals.

31. According to YPF's March 10, 2008 Amendment No. 1 to Form F-3 filing, as of September 30, 2007, YPFH's reserves for environmental and other contingencies

totaled only about $113.5 million. YPF specifically acknowledged, in its March 10, 2008 Amendment No. 1 to Form F-3 filing, that the reserves might not be sufficient and that material costs in addition to the reserves could be incurred.

> [M]any such contingencies are subject to significant uncertainties, including the completion of ongoing studies, the discovery of new facts, or the issuance of orders by regulatory authorities, which could result in material additions to such reserves in the future. It is possible that additional claims will be made, and additional information about new or existing claims (such as results of ongoing investigations, the issuance of court decisions or the signing of settlement agreements) is likely to develop over time. YPF Holdings' reserves for the environmental and other contingencies described below are based solely on currently available information and as a result, YPF Holdings, Maxus and Tierra may have to incur costs that may be material, in addition to the reserves already taken.

32. Indeed, YPF has publicly recognized potential environmental liabilities of Maxus, Tierra, and YPF Holdings far greater than their reserves. In YPF's March 10, 2008, Amendment No. 1 to Form F-3 filing, YPF noted that a Newark, New Jersey consent decree led YPFH to set reserves of $16.2 million. In addition, YPF noted that, during 2007, the EPA had released a draft Focused Feasibility Study (FSS), which described several alternatives for cleanup of the lower eight miles of the Passaic River. The EPA estimated in its FSS that the cost of such cleanup could range from $900 million to $2.3 billion.

33. According to YPF's March 10, 2008, Amendment No. 1 to Form F-3 filing, with regard to actions related to the Passaic River, Newark Bay, and surrounding areas, YPFH had reserved $16 million as of September 30, 2007. Based on remediation scenarios, reserves were increased to $25 million in the last quarter of 2007. YPF observed that "[t]he development of new information or the imposition of natural resource damages or remedial actions differing from the scenarios we have evaluated could result in Maxus and Tierra incurring additional costs to the amount currently reserved."

34. Similarly, Repsol, in its December 31, 2006 Form 20-F, recognized sources of environmental liability of Maxus, Tierra, and YPFH, including but not limited to Newark, New Jersey and the Passaic River, that could materially exceed existing reserves:

> At December 31, 2006, Repsol YPF, through YPF Holdings Inc., has recorded provisions for approximately US$117 million to cover all significant risks relating to the environmental liabilities taken on thereunder. However, it is possible that additional claims will be made, and additional information about new or existing claims is likely to be developed over time. As a result, Maxus and Tierra may have to incur costs that may be material, in addition to the reserves already made.

THE CROSS-CLAIM DEFENDANTS ARE ALTER EGOS OF EACH OTHER AND TOGETHER CONSTITUTE ONE COHESIVE ECONOMIC UNIT RESPONSIBLE FOR MAXUS' OBLIGATIONS TO OCCIDENTAL

35. In its SEC Form 20-F filing for the fiscal year ended December 31, 2000, Repsol represented its management structure as follows:

> Repsol YPF has a unified global corporate structure with headquarters in Madrid, Spain and Buenos Aires, Argentina. Repsol YPF manages its business as a single organization at both the operational and organizational levels. Key functions such as strategic planning, control, finance and human resources are centrally coordinated.

36. On August 27, 2010, Plaintiffs filed their Complaint, alleging that "[t]hrough a series of related transactions, Defendants Repsol, YPF, YPFI, YPFH, CLHH, Maxus, MIEC and Tierra (the 'Repsol Group') coordinated and executed a scheme through complex corporate restructuring to strand the environmental liabilities associated with the Newark Bay Complex in Maxus and Tierra, while systematically stripping Maxus' direct and indirect assets and holdings, thereby extinguishing Maxus' and Tierra's ability to satisfy their obligations and liabilities for the environmental and economic damages caused by the discharges from the Lister Site in New Jersey and elsewhere." (3d Am. Compl. ¶ 36; *see also id.* ¶¶ 37-62.) Occidental adopts all of allegations in paragraphs 36–62 of the Complaint that Occidental has admitted are true as set forth in Occidental's response thereto and

incorporates them as if fully set forth herein. Occidental also generally adopts the corporate misconduct allegations against the Repsol Group asserted in Plaintiffs' Fourth Amended Complaint, which is to be filed contemporaneously herewith.

37. At the same time YPF and Repsol were publicly proclaiming their commitment to fulfill Maxus' environmental indemnity obligations, as alleged above, they were privately stripping assets out of Maxus until nothing of any value was left in the company. With assistance from advisors, YPF devised the scheme to deplete Maxus' assets. Repsol condoned and continued this scheme at all relevant times after it acquired a controlling interest in YPF in 1999.

38. Moreover, YPF and Repsol used other members of the Repsol Group as instruments to perpetrate a fraud upon Occidental. For example, YPFI was merely a shell corporation created to facilitate efforts to strip Maxus' assets and strand its environmental obligations, most especially the obligations to Occidental, in insolvent entities with no financial ability to fulfill those obligations unless and except to the extent that YPF or Repsol choose to provide the necessary funding. By 2006 -- eleven years after YPF acquired Maxus, and seven years after Repsol acquired YPF -- the Repsol Group had successfully depleted Maxus' multi-billion dollar assets and left Maxus with a huge negative net worth.

39. By no later than 2005, the Repsol Group recognized what they described as the problem of Maxus' "ascending liabilities," meaning the liabilities borne by the entire Repsol Group because of their alter ego status and their deliberate and systematic stripping of Maxus' assets and stranding of its liabilities. Since that time, the Repsol Group have taken various steps designed and intended to create a false appearance of "corporate separateness" among the members of the group, when in fact they are mere alter egos of each other, and to

create a false appearance that the Repsol Group have not deliberately rendered Maxus and Tierra incapable of performing their obligations to Occidental, when in fact they have.

40. Instead of restoring Maxus' stripped assets, however, the Repsol Group have continued their fraudulent scheme, simply adopting new ways and means. For example, in 2005 Repsol created Repsol E&P USA, Inc. ("Repsol E&P"), as a U.S. corporation outside the chain of YPF's ownership of U.S. entities. The express purpose of Repsol E&P was to exist "at the margin" of Maxus, as a vehicle to strip any remaining, valuable assets or business opportunities belonging to Maxus and attempt to insulate and isolate such assets and opportunities from Maxus' preexisting liabilities to Occidental, such as by moving Maxus' human capital, technical resources and know-how, and remaining valuable energy assets and exploration opportunities in the Gulf of Mexico, to Repsol E&P without reasonably equivalent value or consideration to Maxus. Repsol took such actions with intent to hinder, delay and defraud Occidental.

41. Merits discovery is ongoing, and Occidental has not yet had an opportunity to discover all of the material facts relating to the Repsol Group's efforts to strip Maxus' assets and strand its liabilities, specifically including its liability to Occidental under the SPA. However, upon information and belief, the Repsol Group are continuing to take actions among the group that are designed and intended not to restore Maxus' assets or reverse years of abuse of corporate forms, but to cover the Repsol Group's tracks while continuing to perpetuate, in other equally unlawful ways, their fraudulent scheme to leave Maxus and Tierra as nothing but insolvent shells totally dependent upon other members of the Repsol Group for the funding necessary to fulfill their legal obligations to Occidental.

THE CURRENT LITIGATION

42. In their Complaint, Plaintiffs assert claims against Occidental and the Cross-Claim Defendants pursuant to some or all of the following: the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a to -23.11z (the "Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -37.23 (the "WPCA"), the New Jersey Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-10 to -34 (the "UFTA"), and New Jersey common law. These claims are based in part on Plaintiffs' contention that "[f]or roughly twenty years of plant operations, Diamond Shamrock Corporation, its predecessors- and successors-in-interest, including OCC and/or Maxus, deliberately polluted the Passaic River with 2,3,7,8-tetrachlorodibenzo-p-dioxin ("TCDD"), and various other pesticides and chemicals." (3d Am. Compl. ¶ 1.) Plaintiffs allege that the purported pollution originated at the Lister Site.

43. Occidental is a Defendant in this action solely by virtue of the 1986 acquisition of DSCC. Occidental has never independently owned or operated the Lister Site. Old Diamond Shamrock's operations at the Lister Plant ceased in the late 1960s. Moreover, ***before*** Occidental's affiliate purchased the stock of DSCC, Maxus, for its own benefit, caused DSCC to acquire or reacquire title to 80 and 120 Lister Avenue and to transfer the entire Lister Site to Diamond Shamrock Chemical Land Holdings, Inc., now known as Tierra.

44. Plaintiffs' claims against Occidental thus relate to, result from, and arise out of a Superfund Site, an Inactive Site, and/or a Historical Obligation, as those terms are defined in the SPA. Pursuant to Sections 9.03(a) of the SPA generally, and subsections (iii), (iv), and (viii) of that section specifically, Maxus owes a defense and a full indemnity to Occidental for all of the claims asserted by Plaintiffs against Occidental in the Complaint.

45. Plaintiffs also allege that for twenty years, the Cross-Claim Defendants have "orchestrated and implemented a strategy to delay and impede the clean-up and restoration of the Passaic River and strand the associated liabilities in Maxus and Tierra." (3d Am. Compl. ¶ 1.) Plaintiffs assert that beginning in 1987, the Cross-Claim Defendants orchestrated a scheme "to shift blame away from their activities on the Lister Site," "to mislead the regulators," and "to bias the results of the investigation and testing that they controlled." (*Id.* ¶¶ 80-82.) Plaintiffs contend that the delay caused by this alleged conduct has contributed to the purported pollution of the Passaic River and has increased the purported damages.

46. As alleged in the Complaint, the Cross-Claims Defendants—not Occidental—have controlled the environmental response at the Lister Site. That response commenced during the Old Diamond Shamrock Reorganization that began more than three years before Occidental's affiliate acquired the stock of DSCC. During the time period involved in these allegations, Maxus, and later Tierra, assumed the responsibility of defending and indemnifying Occidental pursuant to Maxus' obligations to indemnify Occidental as set forth in Section 9.03 of the SPA. Occidental justifiably relied on Maxus and Tierra as Occidental's indemnitors to resolve the claims of the NJDEP and the EPA. If Plaintiffs' allegation that there has been a conspiracy to avoid or to delay clean up of the Passaic River is true, then Maxus and Tierra have breached their obligations to Occidental. Accordingly, the Cross-Claim Defendants owe Occidental a common law obligation to indemnify and hold harmless Occidental for any liability Occidental may incur because of their wrongful acts. This common law indemnity is in addition to the contractual indemnities owed by Maxus.

47. In 2005, Occidental tendered defense of this case to Maxus in accordance with the procedures set forth in Section 9.04 of the SPA. Maxus accepted the defense, but it

purported to reserve the right to deny its obligation to indemnify Occidental for any final judgment in certain respects.

48. From 1995 through the present, YPF has actively concealed the scheme to strand environmental liabilities in companies incapable of fulfilling the obligations of the SPA, by repeatedly acknowledging YPF's responsibility to indemnify Occidental for all claims related to, resulting from, or arising out of Superfund Sites, among other things. From 1999 through the present, Repsol has continued this concealment and facilitated the scheme begun by YPF.

49. Only after Plaintiffs brought this action and deposed corporate representatives from YPF, YPFH, and CLHH, did Occidental learn of the pervasive dissipation of Maxus' assets by Repsol and YPF and their subsidiaries. Occidental could not have known of this scheme prior to such time.

50. Since 1995, the Cross-Claim Defendants have conspired among themselves and otherwise committed various intentional torts against Occidental as alleged herein. These actions have been targeted at Occidental in New Jersey and elsewhere, for the purpose and/or with the effect of rendering Maxus unable to fulfill its indemnification obligations to Occidental that are owed pursuant to Section 9.03 of the SPA, specifically including, but not limited to, obligations in respect of the Lister Site. The Cross-Claim Defendants knew or should have known that their conduct, as alleged herein, would have an impact upon and cause an effect upon the obligations and liabilities of Occidental in New Jersey, including as to the Lister Site in particular.

51. Notwithstanding the fact that YPF's International Unit was comprised substantially of Maxus' assets and that YPF previously had identified Maxus as a business unit of YPF in disclosure statements, YPF and Repsol have taken the position since the filing

of this case that Maxus is not a business unit of YPF but is rather a wholly separate and independent company.

52. Further, YPF and Repsol have refused to assume responsibility for the obligations that Maxus owes to Occidental, although they collectively have destroyed the independent value of Maxus, have treated it as a part of one cohesive economic unit, and have rendered it unable -- through their tortious acts -- of performing its obligations to Occidental.

53. Although Maxus agreed to defend Occidental in the current litigation, Maxus has failed to take reasonable steps to defend Occidental faithfully and diligently in the current suit, as required by Section 9.04(b) of the SPA by, among other things, failing to provide Occidental with separate counsel in the face of a conflict of interest with respect to certain issues raised in the current suit. Indeed, beginning in approximately February 2007, Maxus instructed counsel retained by Maxus for Occidental and representing Occidental as counsel of record in this action that they could not communicate with Occidental.

54. Because of the conflict of interest that now exists between Occidental and Maxus and Tierra and because Maxus has failed to defend Occidental's interests adequately, Occidental asked Maxus to provide Occidental with separate counsel in this action. Maxus refused this request, and Occidental has been forced to retain separate counsel.

FIRST COUNT – AGAINST MAXUS

DECLARATORY JUDGMENT – DUTY TO INDEMNIFY

55. Occidental incorporates each and every preceding allegation in its Cross-Claims.

56. The SPA is a valid and existing contract.

57. Section 9.0(3)(a) of the SPA requires Maxus to "indemnify, defend and hold harmless" Occidental for all "Indemnifiable Losses" as defined in the SPA relating to any of the following:

(a) Superfund Sites and "Federal Superfund Litigation" (subsection (iii));

(b) "Inactive Sites," (subsection (iv)); and

(c) "Historical Obligations" (subsection (viii)).

58. All of the claims asserted by Plaintiffs against Occidental in this action are subject to one or more of the indemnification provisions in the SPA. Thus, Maxus is required to defend Occidental in this action and to indemnify and hold harmless Occidental for all "Indemnifiable Losses" under the SPA, including costs, damages, liabilities, losses, expenses, and attorneys' fees.

59. Although Maxus acknowledged its obligation to defend Occidental in this action, it has denied that it is obligated to indemnify Occidental herein.

60. Maxus has failed to provide a faithful and diligent defense to Occidental, thus breaching the contractual obligations owed to Occidental pursuant to the SPA. Accordingly, pursuant to SPA Section 9.04(b), Occidental has retained separate counsel.

61. Occidental has a tangible interest in obtaining a declaratory judgment on this issue.

62. Therefore, a justiciable controversy currently exists and is ripe for adjudication.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that Maxus owes a contractual obligation to faithfully and diligently defend Occidental in this action.

b. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that Maxus has failed to provide a faithful and diligent defense of Occidental in this action, thus breaching the contractual obligations Maxus owes to Occidental pursuant to the SPA.

c. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that Occidental was entitled to retain separate counsel in this action and to file its cross-claims, and that such actions were not in breach of any duty Occidental owed to Maxus under the SPA.

d. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that Maxus owes a contractual obligation to indemnify and hold harmless Occidental in this action for all "Indemnifiable Losses" under the SPA, including damages, liabilities, losses, expenses, and attorneys' fees.

e. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that Maxus is liable to Occidental for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees, and any judgment or other relief obtained by Plaintiffs against Occidental in respect of the Lister Site and all claims asserted in the Complaint.

f. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

SECOND COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS

DECLARATORY JUDGMENT – ALTER EGO LIABILITY

63. Occidental incorporates each and every preceding allegation in its Cross-Claims.

64. Based upon the facts alleged herein, including the adopted and incorporated allegations of Plaintiffs' Complaints, all of the Cross-Claim Defendants are alter egos of each other and together constitute a Cohesive Economic Unit.

65. Because the Cross-Claim Defendants are alter egos of each other and/or comprise a Cohesive Economic Unit, the other Cross-Claim Defendants have the same contractual obligations as Maxus under the SPA, including, but not limited to, the obligations to defend, indemnify, and hold harmless Occidental pursuant to and in accordance with the SPA.

66. The Cross-Claim Defendants have denied that they are alter egos of each other and/or comprise a Cohesive Economic Unit. They have also denied that they are contractually obligated to defend, indemnify, and hold harmless Occidental pursuant to and in accordance with the SPA.

67. Occidental has a tangible interest in obtaining a declaratory judgment on this issue.

68. Therefore, a justiciable controversy currently exists and is ripe for adjudication.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that the Cross-Claim Defendants are alter egos of each other and/or comprise a Cohesive Economic Unit.

b. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that the Cross-Claim Defendants jointly and severally have contractual obligations to Occidental under the SPA, including, but not limited to, contractual obligations to faithfully and diligently defend Occidental, and to indemnify and hold harmless Occidental, from all "Indemnifiable Losses" under the SPA, including, but not limited to, damages, liabilities, losses, costs, expenses, and attorneys' fees arising from the Lister Site or this action.

c. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that any judgment awarded against Maxus is also a judgment against all of the Cross-Claim Defendants.

d. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that the Cross-Claim Defendants are jointly and severally liable to Occidental for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees, and any judgment or other relief obtained against Occidental for all "Indemnifiable Losses" under the SPA, including, but not limited to, all relief obtained by Plaintiffs against Occidental in respect of the Lister Site and all claims asserted in the Complaint.

e. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that the Cross-Claim Defendants are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses,

and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of "Indemnifiable Losses" under the SPA, including, but not limited to, losses in respect to the Lister Site or the Complaint.

f. Enter judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-51 *et seq.*, declaring that Occidental was entitled to retain separate counsel in this action and to file its cross-claims, and that such actions were not in breach of any duty Occidental owed to Maxus under the SPA.

g. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

THIRD COUNT– AGAINST ALL CROSS-CLAIM DEFENDANTS

BREACH OF CONTRACT

69. Occidental incorporates each and every preceding allegation in its Cross-Claims.

70. The SPA is a valid and existing contract.

71. Section 9.0(3)(a) of the SPA requires Maxus to "indemnify, defend and hold harmless" Occidental for all "Indemnifiable Losses" as defined in the SPA relating to any of the following:

(d) Superfund Sites and "Federal Superfund Litigation" (subsection (iii));

(e) "Inactive Sites," (subsection (iv)); and

(f) "Historical Obligations" (subsection (viii)).

72. All of the claims asserted by Plaintiffs against Occidental in this action are subject to one or more of the indemnification provisions in the SPA. Thus, Maxus is required to faithfully and diligently defend Occidental in this action and to indemnify and

hold harmless Occidental for all "Indemnifiable Losses" under the SPA, including damages, liabilities, losses, costs, expenses, and attorneys' fees.

73. Based upon the facts alleged herein, including the adopted and incorporated allegations of Plaintiffs' Complaints, all of the Cross-Claim Defendants are alter egos of each other and together constitute a Cohesive Economic Unit.

74. Because the Cross-Claim Defendants are alter egos of each other and/or comprise a Cohesive Economic Unit, the other Cross-Claim Defendants have the same contractual obligations as Maxus to defend, indemnify, and hold harmless Occidental pursuant to and in accordance with the SPA.

75. The Cross-Claim Defendants have failed to provide a faithful and diligent defense to Occidental, thus breaching the contractual obligations owed to Occidental pursuant to the SPA. Accordingly, pursuant to SPA Section 9.04(b), Occidental has retained separate counsel.

76. The Cross-Claim Defendants knew or should have known that their conduct, as alleged herein, would have an impact upon and cause an effect upon the obligations and liabilities of Occidental in New Jersey, including as to the Lister Site in particular, and elsewhere.

77. As a result of the Cross-Claim Defendants' breach of their contractual duty to defend Occidental in this action, Occidental has incurred damages in the form of its attorneys' fees and expenses in this action and will continue to incur such damages.

78. In the event that Plaintiffs obtain a judgment or otherwise obtain any relief against Occidental on any or all of the claims in this case, the Cross-Claim Defendants are contractually required to pay the same. Should the Cross-Claim Defendants fail to pay, such failure would cause further damage to Occidental.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that Maxus, Tierra and the other Cross-Claim Defendants are alter egos of each other, and together constitute a Cohesive Economic Unit.

b. Enter judgment declaring that the Cross-Claim Defendants owe a contractual obligation to faithfully and diligently defend, indemnify, and hold harmless Occidental in this action and are jointly and severally liable to Occidental for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees, and any judgment or other relief obtained by Plaintiffs against Occidental in respect of the Lister Site and the claims asserted in the Complaint.

c. Enter judgment declaring that any judgment awarded against Maxus is also a judgment against all of the Cross-Claim Defendants.

d. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action, and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the Lister Site and any of the claims asserted in the Complaint.

e. Enter judgment declaring that the Cross-Claim Defendants are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be

imposed on Occidental in the future relating to, resulting from, or arising out of the Lister Site, the Complaint, or future "Indemnifiable Losses" under the SPA.

f. Enter judgment declaring that Occidental was entitled to retain separate counsel in this action and to file its cross-claims, and that such actions were not in breach of any duty Occidental owed to Maxus under the SPA.

g. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

FOURTH COUNT – AGAINST REPSOL AND YPF

TORTIOUS INTERFERENCE WITH CONTRACT

79. Occidental incorporates each and every preceding allegation in its Cross-Claims.

80. Occidental pleads this Fourth Count in the alternative to the Third Count insofar as the Third Count is alleged against Repsol and YPF.

81. From the date of its execution in 1986 to the present, the SPA has been and continues to be a valid and existing contract. During that time period, and pursuant to the SPA, Maxus owed and continues to owe certain indemnification obligations to Occidental, including, but not limited to, the duty to faithfully and diligently defend, indemnify, and hold harmless Occidental for all losses, (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future, relating to, resulting from, or arising out of the Complaint, the Lister Site, other sites in New Jersey, or elsewhere.

82. At all times relevant to this Fourth Count, Repsol and YPF had actual knowledge of the SPA and of the defense and indemnification obligations owed by Maxus to Occidental under the SPA.

83. Prior to YPF's acquisition of Maxus, Maxus had concluded that its liabilities related to the Lister Site and the Passaic River ultimately could be far more than the amount Maxus had reserved for such liabilities. From and after YPF's acquisition of Maxus, both Maxus and YPF knew or should have known that the costs of the defense and indemnification obligations owed to Occidental under the SPA, including obligations relating to, resulting from, or arising out the Lister Site, were likely to exceed the amount Maxus had reserved for those obligations.

84. With actual knowledge of Maxus' indemnification obligations to Occidental pursuant to the SPA, YPF devised and implemented a scheme to interfere with Maxus' ability to fulfill those obligations.

85. YPF caused Tierra to assume Maxus' obligations to Occidental, yet YPF only agreed to fund Tierra up to the amount Maxus then had reserved for losses in connection with the duty to indemnify Occidental. YPF knew or should have known that such amount was wholly inadequate under the circumstances.

86. In addition to orchestrating Tierra's assumption of Maxus' obligations to Occidental, YPF systematically stripped Maxus of its assets and caused them to be held by other corporations YPF controlled, including YPFI.

87. Repsol acquired control of YPF in 1999, and thereafter continued and perpetuated the scheme to deprive Maxus of the ability to fulfill its obligations to Occidental, as alleged above.

88. The actions of Repsol and YPF described herein were intentional and were significant factors in causing Maxus to breach its contractual obligations to Occidental.

89. The actions of Repsol and YPF described herein were without justification.

90. The tortious interference commenced by YPF and continued by Repsol has left Maxus unable to fulfill its indemnification obligations to Occidental, including its obligations pursuant to SPA Sections 9.03 and 12.11.

91. Repsol and YPF knew or should have known that their conduct, as alleged herein, would have an impact upon and cause an effect upon the obligations and liabilities of Occidental in New Jersey, including as to the Lister Site in particular, and elsewhere.

92. As a result of the tortious interference of Repsol and YPF, Occidental has incurred damages in the form of its attorneys' fees and expenses in this action and will continue to incur such damages.

93. Moreover, Occidental will be further damaged by YPF's and Repsol's tortious interference in the event that Plaintiffs obtain a judgment or otherwise obtain any relief against Occidental on any or all of the claims in this case and Maxus is unable to pay the amount of the judgment or to reimburse Occidental for its attorneys' fees and expenses incurred in this action.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that Repsol and YPF have tortiously interfered with Maxus' ability to perform duties owed to Occidental pursuant to the SPA.

b. Enter judgment requiring Repsol and YPF to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs as a result of such tortious interference by Repsol and YPF, including, but not limited to, all damages incurred in the defense of this action and for any judgment or other relief

obtained by Plaintiffs against Occidental in respect of the Lister Site and claims asserted in the Complaint.

c. Enter judgment declaring that Repsol and YPF are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of such tortious interference by Repsol and YPF, including, but not limited to, all losses in respect to the Lister Site, the Complaint, or future "Indemnifiable Losses" under the SPA.

d. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

FIFTH COUNT – AGAINST REPSOL AND YPF

FRAUDULENT TRANSFERS

94. Occidental incorporates each and every preceding allegation in its Cross-Claims.

95. Repsol, YPF, YPFH, CLHH, YPFI, MIEC and Tierra are affiliates of Maxus as defined in N.J.S.A. 25:2-21.

96. YPF and Maxus engaged in a scheme to enrich YPF, and later Repsol, by transferring substantially all of Maxus' assets to YPF affiliates, and subsequently to Repsol affiliates, for less than fair market value and by isolating the environmental liabilities associated with the Lister Site in companies wholly unable to fulfill obligations owed to Occidental under the SPA. Such transfers include all of the fraudulent transfers of Maxus' assets alleged in the Complaints.

97. Subsequently, beginning in 2001, Repsol furthered the scheme by directing that Maxus' assets be transferred from YPF's international subsidiaries to Repsol's international subsidiaries that are not within YPF's corporate structure. YPF thereafter did so.

98. When they transferred Maxus' former assets, Repsol and YPF were fully aware of the obligations that Maxus owed to Occidental under the SPA. Repsol and YPF acted with the actual intent to hinder, delay, or defraud Occidental and for the benefit of YPF and Repsol. Maxus did not receive reasonably equivalent value in the transfers of Maxus' assets. Maxus had liabilities beyond its ability to pay, and Maxus, YPF and ultimately Repsol, knew that Maxus was going to incur further liabilities beyond Maxus' ability to pay. The transfers were to an insider and were for antecedent debts. Maxus was insolvent at the time of the transfers, and YPF and Repsol knew or had reasonable cause to believe Maxus was insolvent.

99. All of the above-described transfers constitute fraudulent transfers as defined in the New Jersey codification of the Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-20 to -34.

100. Repsol and YPF knew or should have known that their conduct, as alleged herein, would have an impact upon and cause an effect upon the obligations and liabilities of Occidental in New Jersey, including as to the Lister Site in particular, and elsewhere.

101. Occidental did not discover and could not have reasonably discovered the material facts regarding such fraudulent transfers until after this action was filed by Plaintiffs. Repsol and YPF have, through concealment and inaccurate and misleading statements, fraudulently concealed material facts giving rise to Occidental's fraudulent transfer claims. Much of the information relating to the fraudulent transfers is solely within

the possession of Repsol, YPF, their alter ego affiliates, or their agents, and discovery is ongoing. Occidental reserves the right to provide additional evidence and examples as that information is discovered.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment voiding the fraudulent transfers to the extent necessary to satisfy all damages awarded to Occidental.

b. Award any and all other equitable relief necessary to put Occidental in the position it would have been but for the fraudulent transfers.

c. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

SIXTH COUNT – AGAINST REPSOL AND YPF

UNJUST ENRICHMENT

102. Occidental incorporates each and every preceding allegation in its Cross-Claims.

103. Repsol and YPF have received a benefit through their scheme of transferring Maxus' assets to other entities controlled by Repsol and YPF, in an attempt to prevent those assets from being used to fulfill the indemnification obligations owed by Maxus to Occidental under the SPA.

104. Under the circumstances, as alleged herein, the retention of that benefit without paying the indemnification obligations contractually owed by Maxus to Occidental would unjustly enrich Repsol and YPF.

105. The unjust enrichment of Repsol and YPF has caused damages to Occidental.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that Repsol and YPF have been unjustly enriched at the expense of and to the detriment of Occidental.

b. Enter judgment requiring Repsol and YPF to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the Lister Site and the claims asserted in the Complaint.

c. Enter judgment declaring that Repsol and YPF are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of the Lister Site, the Complaint, or future "Indemnifiable Losses" under the SPA.

d. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

SEVENTH COUNT– AGAINST ALL CROSS-CLAIM DEFENDANTS

CONTRACTUAL INDEMNIFICATION

106. Occidental incorporates each and every preceding allegation in its Cross-Claims.

107. In the event that Plaintiffs obtain a judgment or otherwise obtain any relief against Occidental on any or all of the claims in this case, Repsol, YPF, YPFH, YPFI, MIEC, Tierra and CLHH, as alter egos of Maxus and/or as part of a Cohesive Economic Unit with

Maxus, would be contractually required to pay the amount of such judgment or other relief against Occidental. Should Repsol, YPF, YPFH, YPFI, MIEC, Tierra and CLHH fail to pay, this would cause further damage to Occidental.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that the Cross-Claim Defendants are the alter egos of each other, and together constitute a Cohesive Economic Unit.

b. Enter judgment requiring Repsol, YPF, YPFH, YPFI, MIEC, Tierra and CLHH to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action, and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the Lister Site and the claims asserted in the Complaint.

c. Enter judgment declaring that Repsol, YPF, YPFH, YPFI, MIEC, Tierra and CLHH are contractually obligated to defend, indemnify and hold harmless Occidental for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) incurred by Occidental relating to, resulting from, or arising out of the Lister Site, the Complaint, or future "Indemnifiable Losses" under the SPA.

d. Enter judgment declaring that Occidental was entitled to retain separate counsel in this action and file its cross-claims, and that such actions were not in breach of any duty Occidental owed to Maxus under the SPA.

e. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

EIGHTH COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS

CONTRIBUTION UNDER THE SPILL ACT

108. Occidental incorporates each and every preceding allegation in its Cross-Claims.

109. The Spill Act, N.J.S.A. 58:10-23.11f.a.(2), provides that whenever a person cleans up and removes a discharge of a hazardous substance, that person shall have a right of contribution against all dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance.

110. The Spill Act, N.J.S.A. 58:10-23.11f.a.(2), also provides that in an action for contribution, the contribution plaintiff need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to N.J.S.A. 58:10-23.11g.c.(1).

111. The Cross-Claim Defendants are "dischargers" or "persons in any way responsible for a discharge of hazardous substances" under the Spill Act.

112. While Occidental denies liability, in the event and to the extent that Occidental is held liable and incurs cleanup and removal costs and/or damages with regard to hazardous substances that the Cross-Claim Defendants discharged and/or for which they are responsible pursuant to the Spill Act, Occidental is entitled to contribution under the Spill Act from the Cross-Claim Defendants.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that in the event and to the extent that Occidental is found liable to Plaintiffs or any other person or party under the Spill Act for cleanup, removal, and restoration costs and/or damages, if any, attributable to

discharges of hazardous substances at or from the Lister Site, then the Cross-Claim Defendants are jointly and severally liable to Occidental to pay for any and all such liability.

b. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the claims asserted in the Complaint.

c. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all cleanup, removal, and restoration costs incurred by Occidental in connection with the Lister Site.

d. Enter judgment declaring that the Cross-Claim Defendants are jointly and severally liable to Occidental for any cleanup and removal costs incurred by, or damages imposed on Occidental, in the future relating to, resulting from, or arising out of the Lister Site or the Complaint, including costs or damages to be incurred after the conclusion of this action.

e. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

NINTH COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS

STATUTORY CONTRIBUTION

113. Occidental incorporates each and every preceding allegation in its Cross-Claims.

114. While Occidental denies any liability for any costs incurred by any party in connection with this action, in the event and to the extent that Occidental is found liable to

any person or party for any such costs, Occidental is entitled to contribution from the Cross-Claim Defendants for all such damages incurred or to be incurred, pursuant to the New Jersey Joint Tortfeasors Act, N.J.S.A. 2A:53A-1, *et seq.*, and the Comparative Negligence Act, N.J.S.A. 2A:15-5.1, *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that in the event and to the extent that Occidental is found liable to Plaintiffs or any other person or party under the Spill Act for cleanup, removal, and restoration costs and/or damages attributable to discharges of hazardous substances at or from the Lister Site, then the Cross-Claim Defendants are jointly and severally liable to Occidental to pay for any and all such liability.

b. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the claims asserted in the Complaint.

c. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all cleanup, removal, and restoration costs incurred by Occidental in connection with the Lister Site.

d. Enter judgment declaring that the Cross-Claim Defendants are jointly and severally liable to Occidental for any cleanup, removal, and restoration costs incurred by, or damages imposed on Occidental in the future relating to,

resulting from, or arising out of the Lister Site or the Complaint, including costs or damages to be incurred after the conclusion of this action.

e. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

TENTH COUNT– AGAINST ALL CROSS-CLAIM DEFENDANTS

CIVIL CONSPIRACY/AIDING AND ABETTING

115. Occidental incorporates each and every preceding allegation in its Cross-Claims.

116. Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH acted together and/or agreed or knowingly participated in a scheme to enrich YPF, and subsequently Repsol, by transferring substantially all of Maxus' assets to YPF affiliates, and later to Repsol affiliates, and isolating the environmental liabilities owed to Occidental under the SPA, including liabilities associated with the Lister Site, in companies wholly unable to meet those obligations, *i.e.,* Maxus and Tierra. This was done with the actual intent to hinder, delay or defraud and for the benefit of YPF and Repsol.

117. As described herein and in Plaintiffs' Complaints, Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH undertook substantial wrongful, overt acts in furtherance of this course of action.

118. Occidental was harmed by these wrongful acts of Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH.

119. Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH are jointly and severally liable as co-conspirators.

120. Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH are liable for aiding and abetting one another. Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and

YPFH knew about the scheme to strip assets and isolate environmental liabilities, and they knowingly provided substantial assistance and encouragement to each other. In aiding and abetting each other and further advancing the scheme, Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH and their affiliates caused Occidental to suffer damages.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH have engaged in a civil conspiracy and/or aided and abetted in a scheme to remove assets from Maxus and to isolate environmental liabilities in Maxus and Tierra so that those assets cannot be used to satisfy Maxus' obligations to Occidental.

b. Enter judgment holding Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH jointly and severally liable to Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs as a result of their actions, including, but not limited to, all damages incurred in the defense of this action and for any judgment or other relief obtained against Occidental in respect of the Lister Site and/or claims asserted in the Complaint.

c. Enter judgment declaring that Repsol, YPF, Maxus, MIEC, YPFI, Tierra, CLHH, and YPFH are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of such their actions, including, but not limited to,

all losses in respect to the Lister Site, the Complaint, or future "Indemnifiable Losses" under the SPA.

d. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

ELEVENTH COUNT –AGAINST YPF, YPFH, YPFI, AND REPSOL

BREACH OF FIDUCIARY DUTY (DERIVATIVE CLAIM)

121. Occidental incorporates each and every preceding allegation in its Cross-Claims.

122. Occidental brings this claim derivatively on behalf of Maxus.

123. YPF, YPFH, YPFI, and Repsol breached their fiduciary duties to Maxus and Maxus' creditors, including Occidental.

124. No later than June 1995 when YPF acquired Maxus through a leveraged buy-out ("LBO"), Maxus was insolvent or became insolvent as a result of the transfers made and obligations incurred in connection with the LBO. Since that time, Maxus has remained insolvent.

125. As a result of Maxus' insolvency, YPF, YPFH, YPFI, and Repsol (all of which are or have been corporate parents of Maxus at various times) had fiduciary relationships with Maxus and owed fiduciary duties to Maxus (and, derivatively, to its creditors), including the duty of good faith, the duty of loyalty to always act in the best interest of Maxus and its creditors, and the duty to avoid self-dealing and self-enrichment at the expense of Maxus and its creditors.

126. As described herein and in Plaintiffs' Complaints, YPF, YPFH, YPFI, and Repsol breached these fiduciary duties to Maxus and its creditors by, among other things,

orchestrating, authorizing, and carrying out the plan by which they took all or substantially all of the assets from Maxus when they knew or should have known that their actions would leave Maxus unable to satisfy its obligations to its creditors, including its obligations to Occidental under the SPA.

127. The breaches of fiduciary duty by YPF, YPFH, YPFI, and Repsol proximately caused substantial harm to Maxus (and thus to its creditors) in an amount to be determined at trial.

128. Maxus continues to be a wholly owned subsidiary of YPF and YPFH and is adversely dominated by them. Thus, it is unable to assert this claim on its own behalf.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that Repsol, YPF, YPFI, and YPFH have breached their fiduciary duties to Maxus and its creditors.

b. Enter judgment holding Repsol, YPF, YPFI, and YPFH jointly and severally liable to Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs as a result of their actions, including, but not limited to, all damages incurred in the defense of this action and for any judgment or other relief obtained against Occidental in respect of the Lister Site and/or claims asserted in the Complaint.

c. Enter judgment declaring that Repsol, YPF, YPFI, and YPFH are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of

such their actions, including, but not limited to, all losses in respect to the Lister Site, the Complaint or future "Indemnifiable Losses" under the SPA.

d. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

TWELFTH COUNT–AGAINST YPF, YPFH, YPFI, AND REPSOL

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (DERIVATIVE CLAIM)

129. Occidental incorporates each and every preceding allegation in its Cross-Claims.

130. Occidental brings this claim derivatively on behalf of Maxus.

131. No later than June 1995 when YPF acquired Maxus through a leveraged buy-out ("LBO"), Maxus was insolvent or became insolvent as a result of the transfers made and obligations incurred in connection with the LBO. Since that time, Maxus has remained insolvent.

132. The Directors of Maxus have a fiduciary relationship with Maxus and owe fiduciary duties to Maxus, including the duty of good faith, the duty of loyalty to always act in the best interest of Maxus, and the duty to avoid self-dealing and self-enrichment at the expense of Maxus.

133. Because Maxus is insolvent, the creditors of Maxus (such as Occidental) have standing to enforce those fiduciary duties on behalf of Maxus.

134. As described herein and in Plaintiffs' Complaints, the Directors of Maxus breached these fiduciary duties to Maxus (and its creditors) by, among other things, orchestrating, authorizing, approving, and/or carrying out the plan by which all or substantially all of the assets were removed from Maxus and transferred to or used to satisfy

the obligations of YPF, YPFH, YPFI, and/or Repsol. This occurred at a time when the Maxus Directors knew or should have known that their actions would leave Maxus unable to satisfy its obligations to its creditors, including its obligations to Occidental under the SPA.

135. During all relevant times, the Directors of Maxus have been selected by YPF and/or Repsol, and many of the Maxus Directors have also been directors of YPF and/or Repsol. Thus, the Maxus Directors have been controlled by YPF and/or Repsol and have acted for the benefit of YPF and/or Repsol instead of in the interests of Maxus and its creditors.

136. YPF, YPFH, YPFI, and Repsol knowingly and intentionally provided substantial assistance to and/or worked in concert with one or more of Maxus' Directors in connection with these breaches of fiduciary duty, including causing or coordinating with the Maxus Directors to facilitate the removal of substantially all of Maxus' assets and the transfer of those assets to YPF, YPFH, YPFI, and/or Repsol or the use of those assets to satisfy the obligations of YPF, YPFH, YPFI, and/or Repsol.

137. The assistance of YPF, YPFH, YPFI, and Repsol was a substantial factor in causing one or more of Maxus' Directors to breach his or her fiduciary duties.

138. These breaches of fiduciary duty proximately caused damages to Maxus and Maxus' creditors (including Occidental) in an amount to be proven at trial. Such damages were the reasonable and forseeable consequence of the conduct of YPF, YPFH, YPFI, and Repsol. Thus, YPF, YPFH, YPFI, and Repsol are liable for all actual and consequential damages resulting from their conduct in aiding and abetting these breaches of fiduciary duty.

139. Maxus continues to be a wholly owned subsidiary of YPF and YPFH and is adversely dominated by them. Thus, it is unable to assert this claim on its own behalf.

PRAYER FOR RELIEF

WHEREFORE, Occidental prays that this Court:

a. Enter judgment declaring that Repsol, YPF, YPFI, and YPFH have aided and abetted breaches of fiduciary duties owed by Maxus Directors to Maxus and its creditors.

b. Enter judgment holding Repsol, YPF, YPFI, and YPFH jointly and severally liable to Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs as a result of their actions, including, but not limited to, all damages incurred in the defense of this action and for any judgment or other relief obtained against Occidental in respect of the Lister Site and/or claims asserted in the Complaint.

c. Enter judgment declaring that Repsol, YPF, YPFI, and YPFH are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of such their actions, including, but not limited to, all losses in respect to the Lister Site, the Complaint, or future "Indemnifiable Losses" under the SPA.

d. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

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DATED: September 26, 2012

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant Occidental Chemical Corporation's Second Amended Cross-Claims was served upon all parties by posting on https://cvg.ctsummation.com consistent with Case Management Order XIII.

Date: September 26, 2012

Lindsay A. Wagner, Esq.