

December 14, 2012

Honorable Marina Corodemus (Ret.)
Corodemus & Corodemus LLC
The Woodbridge Hilton Building
120 Wood Avenue South, Suite 500
Iselin, New Jersey 08830

**REQUEST TO FILE
MOTION TO DISMISS
THE STATE'S FOURTH
AMENDED COMPLAINT**

Re: *New Jersey Department of Environmental Protection et al. v. Occidental Chemical Corp., et al.*, Dkt. No. ESX-L-9868-05, Superior Court of New Jersey, Law Division, Essex County

Dear Judge Corodemus:

On September 28, 2012, the State filed its Fourth Amended Complaint. Pursuant to Paragraph 8 of CMO XII, YPF S.A., YPFH, YPFI and CLH (collectively "YPF") seek permission to file a motion to dismiss several of State's claims as they do not relate back to State's original complaint and thus are barred by the statutes of repose and statutes of limitations, and because they otherwise fail to state a claim upon which relief can be granted. YPF has previously asserted a challenge to personal jurisdiction, which it does not reassert in this letter with the understanding that its challenge thereto is preserved. To the extent that they are applicable to YPF, YPF joins in the arguments for dismissing the Fourth Amended Complaint as stated in the letter sent today on behalf of Repsol, S.A.

Legal Grounds. YPF's motion will seek dismissal of the State's claims against YPF for (i) breach of fiduciary duty and aiding abetting breach of fiduciary duty (first asserted on September 28, 2012); (ii) fraudulent transfer in connection with YPF's June 1995 acquisition of Maxus (first asserted on September 28, 2012); and (iii) the fraudulent transfer of Maxus' assets in June 1996, July 1996, September 1996 and December 1997 (first asserted on April 15, 2008). Prior to the dates these claims were asserted, all such claims had been extinguished or were otherwise time-barred. In addition, the State's allegations of alter ego liability between Maxus, YPF and Repsol that rely on events occurring after the last transfer by Maxus of its assets in 1999, are irrelevant and insufficient as a matter of law to establish alter ego liability during the period of the non-time barred transfers at issue.

The State's claims for fraudulent transfer (N.J.S.A. §§ 25:2-20 to 34) were extinguished ten years after each transfer. N.J.S.A. § 2A:14-1.2(a); State Dep't of Env't'l. Prot. v. Caldeira, 794 A.2d 156, 165 (N.J. 2002). Several of the alleged transfers at issue by Maxus to YPF occurred between 1996 and 1997, **more than ten years** before the State first made these allegations in its Second Amended Complaint in April 2008. The acquisition of Maxus occurred in June 1995, **more than seventeen years** before the State first put that



acquisition at issue in its Fourth Amended Complaint in September 2012. Yet, all these transfers had been promptly announced in Maxus' and YPF's public filings, including filings cited in the Fourth Amended Complaint. Those public filings put the State, as an alleged creditor of Maxus during this time, on notice of those transfers. See, e.g. SASCO 1997 NI, LLC v. Zudkewich, 787 A.2d 469, 474-476 (N.J. 2001).

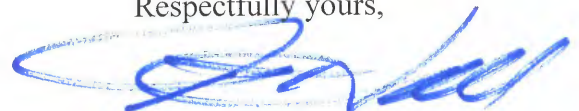
These claims are further extinguished because each of the amended complaints pleaded entirely new facts and theories from those pleaded in the original complaint, and thus not relate back to the original complaint for statute of limitations purposes. See Young v. Schering Corp., 645 A.2d 1238, 1243 (N.J. Super. Ct. App. Div. 1994), aff'd, 660 A.2d 1153 (N.J. 1995). Nothing in the State's 2005 original complaint, which asserted no fraudulent transfer claims whatsoever, would have put YPF on notice that the transfer of Maxus assets to YPF was at issue in this litigation.

Similarly, the State's new breach of fiduciary duty and aiding and abetting breach of fiduciary claims, which also rely entirely on its fraudulent transfer claims (Fourth Am. Compl. ¶¶ 171-76), must be dismissed, at least in part. The State had ten years from the date the breach of fiduciary duty to bring these claim. N.J.S.A. § 2A:14-1.2(a). The vast majority of those alleged transfers occurred more than ten years before the State's September 28, 2012 Fourth Amended Complaint, and the newly pleaded breach of fiduciary duty claims simply do not relate back to the original complaint or any of the earlier amended complaints.

The State's allegations of alter ego liability that predicated on events that transpired after 1999, when the last transfer by Maxus of its assets occurred, are irrelevant and insufficient as a matter of law to establish alter ego liability. Moreover, as a matter of law, in an alter ego analysis, a parent company cannot be held liable for its subsidiary's actions that took place prior to the acquisition of the subsidiary.

Anticipated benefits. A resolution of YPF's motion to dismiss will provide two significant benefits. First, the possible elimination of a number of significant claims will save the Court enormous discovery, summary judgment and trial work, and substantially reduce the parties' litigation costs. YPF is also requesting to move to dismiss many of OCC's claims on similar grounds. Second, the possible elimination of these claims will clarify the parties' litigation risks which will greatly assist them in their ongoing settlement analyses.

Respectfully yours,



Thomas J. Hall

Honorable Marina Corodemus (Ret.)

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cc: All Counsel