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December 19, 2012

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

Re: NJDEP, et al., v. Occidental Chem. Corp., et al., No. ESX-L-9868-05 (PASR)

Dear Judge Corodemus:

Pursuant to Paragraph 8 of CMO XII, Maxus Energy Corporation, Tierra Solutions, Inc. and Maxus International Energy Company ("MIEC") (for the purposes of this letter, collectively "Maxus") respectfully seek permission to file a motion to dismiss some of Occidental Chemical Corporation's ("OCC") cross-claims. As explained in more detail below, Maxus will join in certain arguments from the motions to dismiss of YPF and Repsol that they described in letters to Your Honor dated December 14, 2012. MIEC has previously asserted a challenge to personal jurisdiction, which it does not intend to reassert in this motion with the understanding that its challenge to personal jurisdiction is preserved. Discovery on this issue is presently ongoing.

Legal Grounds. More specifically, Maxus will join in YPF's arguments to move for dismissal of OCC's claims against Maxus for declaratory judgment on alter ego (Count II) and related aiding and abetting and civil conspiracy claims (Count X).

To establish alter ego liability, OCC must prove both (1) domination of the subsidiary by the parent and (2) that the parent "us[ed] the subsidiary to perpetrate a fraud or injustice, or otherwise to circumvent the law." N.J. Dep't of Env'tl. Prot. v. Ventron, 94 N.J. 473, 501 (1983). On the fraud, injustice, or circumvention of law requirement for alter ego liability, OCC relies entirely on its fraudulent transfer claims. But, as set forth in YPF's letter, all of OCC's claims of fraudulent transfers from Maxus to YPF are time-barred by the applicable statute of repose. *See* N.J.S.A. 25:2-31(b); N.J.S.A. 25:2-31(a) (2001) (amended 2002); Intili v. DiGiorgio, 300 N.J. Super. 652, 661 (Ch. Div. 1997). Because those alleged fraudulent transfer claims have been extinguished under the law, OCC has not pleaded a legally sufficient basis for its alter ego claim against Maxus, and its alter ego claim against Maxus fails as a matter of law.

Likewise, any alleged fraudulent transfers after 1999 to which Maxus was not a party, provide no basis for alter ego liability as to Maxus. Once the alleged assets were transferred by Maxus to other corporations, all the subsequent transfers of the same assets after 1999, between other corporate entities, are irrelevant and insufficient as a matter of law as to any claim of fraudulent transfers on the part of Maxus, and are equally

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irrelevant and insufficient as a matter of law on the issue of alter ego liability as to Maxus.

To the extent they are applicable to Maxus, Maxus joins in the arguments of Repsol for dismissing OCC's claims based on alter ego liability and civil conspiracy/aiding-abetting.

Anticipated Benefits to Judicial Economy and Advancement of Ultimate Resolutions. The motions to dismiss, proposed herein and in the letters of YPF and Repsol, are ripe for review, and their resolution now rather than later can serve significant interests of judicial economy and efficient case resolution. Decisions favorable to the cross-claim defendants would narrow the litigation and the remaining discovery (reducing the number of witnesses and foreign deponents) and streamline subsequent summary judgment motions and trial. It would also assist the parties in assessing any potential settlement. This is especially the case because of concurrent requests by defendants Maxus, YPF and Repsol for permission to move to dismiss claims of the State, which raise many of the same legal issues and could dramatically reduce the size and scope of the case.

Respectfully,



Ronald A. Sarachan

cc: All counsel of record