

Law Offices

One Logan Square, Ste. 2000
Philadelphia, PA
19103-6996
215-988-2700 phone
215-988-2757 fax
www.drinkerbiddle.com

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DELAWARE
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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 several of the claims asserted in the State’s Fourth Amended Complaint. 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 the State’s claims against Maxus for alleged fraudulent transfer in connection with YPF’s acquisition and reorganization of Maxus in 1995 and the alleged fraudulent transfer of Maxus assets in June 1996, July 1996, September 1996 and December 1997. As set forth in YPF’s letter, the State’s claims for fraudulent transfer, first asserted in April 2008, were already extinguished and otherwise time-barred ten years after each of these transfers, N.J.S.A. 2A:14-1.2(a); State Dep’t of Env’tl. Prot. v. Caldeira, 171 N.J. 404 (2002). Maxus also will join in YPF’s argument with regard to the State’s allegations of alter ego liability as it relates to Maxus. The State alleges that Maxus’s transfer of its assets were fraudulent because the transfers were allegedly intended to hinder, delay or defraud Maxus’s creditors; once these 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 irrelevant and insufficient as a matter of law on the issue of alter ego liability as to Maxus.

Maxus will also move to dismiss the State’s common law claim based on public nuisance but on different grounds than those presented by Repsol in its letter. The environmental remediation associated with Lister Site discharges has been and continues to be performed by Tierra under the supervision of the U.S. EPA. In this lawsuit, the State solely seeks monetary relief – for past and future costs and damages – and does not

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seek any cleanup or other remedial action. As a matter of law, the State as a public entity may bring a public nuisance claim only to abate the public nuisance, not for damages. In re Lead Paint Litig., 191 N.J. 405 (2007). In the Prayer for Relief of its public nuisance claim, the State specifically states, “nothing herein is intended to seek, and should not be interpreted to seek, that defendants undertake any cleanup, removal, or remedial action within the Newark Bay Complex or on the Lister Site in response this Complaint.” (Fourth Amended Complaint, p. 54.) Accordingly, the State’s public nuisance claim is subject to dismissal as a matter of law.

Maxus also will move to strike and dismiss certain new allegations added to the Fourth Amended Complaint relating to issues that were already adjudicated during Track III. For example, although the Court granted summary judgment in May 2012 against the State with regard to its claim that Maxus is Old Diamond Shamrock’s corporate successor, paragraph 31 of the Fourth Amended Complaint, filed four months later, adds allegations that mimic the same arguments Plaintiffs presented and the Court rejected on summary judgment. Courts do not permit post-adjudication amendments. They are immaterial and should be stricken. E.g., Grimes v. City of East Orange, 285 N.J. Super. 154, 167 (App. Div. 1995). Apparently, the State is seeking to rehash the same arguments that have already been considered and rejected by the Court, which will serve only to waste the parties’ and the Court’s time and resources.

To the extent they are applicable to Maxus, Maxus joins in the arguments of Repsol for dismissing the State’s claims based on alleged fraudulent transfers 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 can serve significant interests of judicial economy and efficient case resolution. Decisions favorable to the 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 true because of concurrent requests by defendants Maxus, YPF and Repsol for permission to move to dismiss OCC’s cross-claims, which raise many of the same legal issues and could greatly streamline the case.

Respectfully,



Ronald A. Sarachan

cc: All counsel of record