

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,
v.

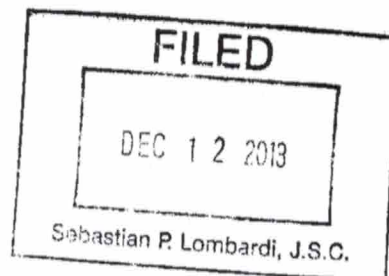
OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC.,

Defendants.

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

Civil Action

CASE MANAGEMENT ORDER XVIII



WHEREAS, a settlement has been reached in the matter entitled New Jersey Department of Environmental Protection, et al. vs. Occidental Chemical Corporation, et al., Docket No. ESX-L-9868-05 (hereinafter the "Passaic River Litigation") and is embodied in a Consent Judgment and the Order of Dismissal ("Dismissal Order") entered this date; and

• WHEREAS, pursuant to the Consent Judgment and Dismissal Order, the Settling Third-Party Defendants have agreed to pay amounts specified therein to settle certain claims with regard to the Newark Bay Complex¹ in exchange for covenants not to sue, contribution protection, dismissals and other protections as provided in the Consent Judgment and the Dismissal Order; and

WHEREAS, pursuant to the Dismissal Order and the Consent Judgment, all claims

¹ Capitalized terms not specifically defined herein are defined in the Consent Judgment and those definitions are hereby incorporated by reference and adopted herein.

against the Settling Third-Party Defendants have been dismissed from the Passaic River Litigation and all claims in contribution against Settling Third-Party Defendants for Claims and Matters Addressed in the Consent Judgment are barred; and

WHEREAS, Plaintiffs will continue to pursue claims under the New Jersey Spill Compensation and Control Act ("Spill Act") and other statutory authorities and common law against defendants, 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, (collectively, the "Defendants") and/or other persons and parties who have not entered into the Consent Judgment(hereinafter the "Passaic River Litigation"); and

WHEREAS, this Court shall retain jurisdiction over the Parties to the Consent Judgment, Dismissal Order, the Passaic River Litigation, and all related proceedings in order to: (a) administer the Consent Judgment consistent with the expectations of the Parties and to protect them from oppression, undue burden or expense; (b) ensure the efficient continuing litigation of the Passaic River Litigation; and (c) address any discovery directed to Parties during the course of the Passaic River Litigation;

WHEREAS, courts afford substantial deference to settlements entered into by government agencies with specific expertise in the matters addressed in the settlement. Plaintiffs and the Settling Third-Party Defendants have engaged in substantive and comprehensive negotiations before entering into the Consent Judgment entered by this Court. The Consent Judgment, Dismissal Order, and this Case Management Order were the subject of notice toparties and interested and identifiable non-parties followed by a hearing conducted on 12th December in consideration of comments, if any, and briefing by the parties and/or non-

parties;

WHEREAS, the Parties entered into the Consent Judgment, in part, to avoid incurring further transactional and litigation costs in the Passaic River Litigation. By entering into the Consent Judgment and Dismissal Order, the Settling Third-Party Defendants intend to settle their respective alleged liability to Plaintiffs and Defendants in connection with the Passaic River Litigation (subject to the terms of the Consent Judgment), and they intend to terminate their further participation in, and to terminate discovery against them in, the Passaic River Litigation.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

As of the date of entry of the Consent Judgment, Dismissal Order and this Case Management Order, the following case management provisions are effective:

A. Jurisdiction

Pursuant to N.J.S.A. 58:10-23.11a to -23.11z, N.J.S.A. 58:10A-1 to -37.23, and the common law, this Court retains jurisdiction over the Passaic River Litigation and all related proceedings in order to: (1) ensure the efficient litigation of the Passaic River Litigation and any related proceedings; (2) administer the Consent Judgment and Dismissal Order consistent with the expectations of the Parties; (3) promote and further the Spill Act's interest in encouraging settlements; (4) protect the Settling Third-Party Defendants from oppression, undue burden or expense; and (5) address any discovery directed to the Settling Third-Party Defendants in the Passaic River Litigation, and any related proceedings.

B. Order

1. All claims by the Defendants against the Settling Third-Party Defendants are dismissed according to the terms of the Dismissal Order.

2. In determining the liability of the Defendants and other entities and parties

which have not settled their liability to Plaintiffs through the Consent Judgment and Dismissal Order ("Non-Settling Parties"), such alleged liability of the Non-Settling Parties shall be reduced in accordance with New Jersey law. The Court shall take judicial notice of the amounts paid (or paid through a reduction of Municipal State Aid for certain Settling Public Third-Party Defendants) by the Settling Third-Party Defendants under the Consent Judgment in determining the liability of the Non-Settling Parties. To the extent that any further proof will be required or permitted to establish the Settling Third-Party Defendants' alleged share of liability, there shall be no discovery by any party against the Settling Third-Party Defendants, except in accordance with Paragraphs 3 and 4 herein. The Court finds (and all previous Case Management Orders in the Passaic River Litigation shall be considered amended to provide) that any determinations of the Court as to liability and damages of the parties after the September 21, 2012 stay of third-party practice are not binding on any Settling Third-Party Defendant and shall not be considered as evidence or argument against any Settling Third-Party Defendant (i) in the Passaic River Litigation or (ii) in an action filed in any other court based upon the same or similar facts alleged as to each Settling Third-Party Defendant in the Third-Party Complaint.

3. Discovery against any Settling Third-Party Defendant is prohibited without prior approval of this Court, upon motion served on the affected Settling Third-Party Defendant including the proposed discovery, and demonstration by the party seeking discovery that such discovery is limited in scope and nature, and is necessary, and reasonable and unavoidable, including a demonstration that:

- (a) the information sought has not already been, and cannot be obtained, from other sources;
- (b) the information sought is not available from the responses, disclosures, discovery,

and other information already provided in the Passaic River Litigation including those previously provided pursuant to Case Management Order No. XII, paragraphs 20 and 21, or other publicly available information;

- (c) the information sought cannot first be obtained from Non-Settling Third-Party Defendants;

and

- (d) that the burden and expense of any proposed discovery does not outweigh its likely benefit.

4. In determining whether the burden or expense of any proposed discovery outweighs its likely benefit, the Court will consider:

- (a) whether the burden and expense of such discovery imposes an undue hardship on the Settling Third-Party Defendants, considering the Settling Third-Party Defendants have paid substantial sums under the Consent Judgment to avoid incurring further transactional and litigation costs, and to limit and terminate their further participation in (and specifically, to limit discovery against them) in the Passaic River Litigation;
- (b) whether such burden is mitigated by requiring the party seeking such discovery to pay all costs and reasonable attorneys fees incurred in responding thereto;
- (c) whether the needs of the case for discovery against Settling Third-Party Defendants are limited, considering the claims in Plaintiffs' Fourth Amended Complaint are based on the alleged discharge of certain hazardous substances into the Newark Bay Complex by the Defendants from the Lister Property during the Defendants' ownership or control, and not on any alleged discharges from

properties, locations or sources associated with any Settling Third-Party Defendant;

- (d) whether the need for such discovery is warranted by the amount in controversy, considering the Settling Third-Party Defendants have settled the full amount of their alleged liability, and have no further liability for any portion of the amount in controversy;
- (d) whether consideration of the parties' resources warrants limiting such discovery; and
- (e) whether consideration of the importance of the issues at stake in the action warrants limiting such discovery, considering the alleged liability of the Settling Third-Party Defendants has already been settled and does not require further proof, and the facts and evidence relating to the alleged liability of such parties may be unrelated to the liability of the Defendants and unnecessary to prove that liability (or the liability of Non-Settling Parties).

5. Nothing contained herein shall alter or amend any provision governing the confidentiality protections contained in all prior Orders of this Court in the Passaic River Litigation, including any Case Management Orders.

6. Settling Third-Party Defendants shall not be obligated to pay fees to the Special Master or any ESI Consultant imposed by the Court's January 28, 2011 Orders or other court fees that are incurred after entry of the Consent Judgment and Dismissal Order.

C. Consistency with the Consent Judgment

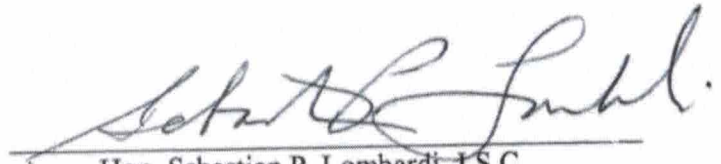
This Case Management Order shall be construed consistently with and to effectuate the purposes of the Consent Judgment and Dismissal Order, and any terms used herein shall be

construed according to their definitions as set forth in the Consent Judgment and Dismissal Order.

D. Case Management for Non-Settling Third-Party Defendants

Upon entering the Consent Judgment, Dismissal Order and this Case Management Order, the stay governing third-party practice in the Passaic River Litigation concludes and the discovery and other obligations of Non-Settling Third-Party Defendants governed by the Court's Order on Track VII Trial Plan under Case Management Order XVII shall continue in effect, subject to deadline modifications at the discretion of the Special Master.

SO ORDERED.


Hon. Sebastian P. Lombardi, J.S.C.

Dated:

ORDER entered for the reasons
stated in an oral decision
on 12/12/13.