

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF THE 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, 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.

MAXUS ENERGY CORPORATION
AND TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

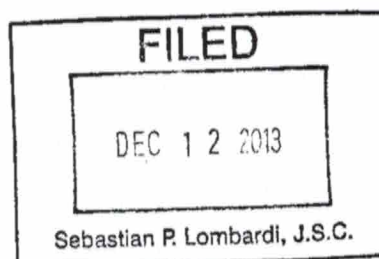
3M COMPANY, et al.,

Third-Party Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L9868-05 (PASR)

Civil Action

CASE MANAGEMENT ORDER XX



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 Settlement Agreement and the Order of Dismissal ("Dismissal Order") approved on this date; and

WHEREAS, pursuant to the Settlement Agreement and Dismissal Order, the Settling Defendants, Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), Maxus International Energy Company ("MIEC"), Repsol, S.A. f/k/a Repsol YPF, S.A. ("Repsol"), YPF,

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S.A. ("YPF"), YPF Holdings, Inc. ("YPFH"), YPF International S.A. ("YPFI") and CLH Holdings, Inc. ("CLHH") (collectively, "Settling Defendants"), have provided the consideration 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 Settlement Agreement and the Dismissal Order; and

WHEREAS, pursuant to the Dismissal Order and the Settlement Agreement, all claims against the Settling Defendants by Plaintiffs have been dismissed from the Passaic River Litigation; 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 defendant, Occidental Chemical Corporation ("OCC"); and

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

WHEREAS, the Settling Defendants agreed not to contest this Court's assertion of personal jurisdiction over them solely for the limited purpose of enforcing the terms of the Settlement Agreement and the Dismissal Order; and

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

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 Defendants have engaged in substantive and comprehensive negotiations before entering into the Settlement Agreement approved by this Court. The Settlement Agreement has been the subject of public notice and comment in accordance with N.J.S.A. 58:10-23.11e2 and the Settlement Agreement, Dismissal Order, and this Case Management Order were the subject of notice to parties and interested and identifiable non-parties followed by a hearing conducted on 12/12/13 in consideration of comments, if any, and briefing by the parties and/or non-parties; and

WHEREAS, the Parties entered into the Settlement Agreement, in part, to avoid unnecessary further transactional and litigation costs in the Passaic River Litigation. By entering into the Settlement Agreement and Dismissal Order, the Settling Defendants intend to settle their respective alleged liability to Plaintiffs in connection with the Passaic River Litigation (subject to the terms of the Settlement Agreement), and they intend to postpone further litigation against them until Plaintiffs' remaining claims against OCC are tried and damages, if any, are awarded against OCC in the Passaic River Litigation.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

As of the date of approval of the Settlement Agreement and entry of the 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 subject matter jurisdiction over the Passaic River Litigation in order to: (1) ensure the efficient litigation of the Passaic River Litigation and any related

proceedings; (2) administer the Settlement Agreement 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 Defendants from oppression, undue burden or expense; (5) address any discovery directed to the Settling Defendants in the Passaic River Litigation; and (6) adjudicate any remaining claims asserted between OCC and the Settling Defendants. The Settling Defendants agree not to contest this Court's assertion of personal jurisdiction over them solely for the limited purpose of enforcing the terms of the Settlement Agreement and Dismissal Order.

B. Order

1. All Plaintiffs' claims against the Settling Defendants and Maxus's and Tierra's counterclaims against Plaintiffs are dismissed according to the terms of the Dismissal Order.

2. Plaintiffs' remaining claims against OCC, currently Trial Plan Track VIII as set forth in Case Management Order XVII Trial Plan and Order, will be tried before Trial Plan Track IV. Plaintiffs have leave to file an amended complaint as to their claims against OCC within sixty (60) days of this Order. Thereafter, OCC shall have sixty (60) days to answer or otherwise move on issues not previously addressed by the Court. Plaintiffs and OCC shall submit proposed trial plan(s) to the Court on or before to be set by COURT. Track VIII trial is scheduled to commence on ON A DATE AFTER FURTHER CASE MANAGEMENT. Settling Defendants, as parties, and Settling Defendants' liability to Plaintiffs or OCC shall not be part of Track VIII.

3. Track IV and all Cross-Claims between OCC and the Settling Defendants will be tried after the completion of both Track VIII which shall contain all claims of Plaintiffs remaining in the Passaic River Litigation. Notwithstanding Case Management Order XVII Trial Plan or Consent Order Tracks II and IV Trial Plan Supplement, Track IV discovery (and any discovery concerning the Cross-Claims between OCC and Settling Defendants) is hereby stayed (save only

as provided herein and for potential document preservation orders) pending the final and unappealable approval of the Settlement Agreement and the trial of the Plaintiffs' damages claims under Track VIII, whichever is later, but, in any event, no earlier than April 2014. Furthermore, trial for OCC's Cross-Claims against the Settling Defendants (Tracks II and IV) shall not be set until after the final and unappealable approval of the Settlement Agreement and the trial of the Plaintiffs' damages claims against OCC, whichever is later, but, in any event, no earlier than December 2015. In the event approval of the Settlement Agreement is overturned on appeal, the Court shall modify the trial dates and discovery limitation set forth herein.

4. In determining the liability of OCC and other entities and parties which have not settled their liability to Plaintiffs through the Settlement Agreement or Third-Party Defendant Consent Judgment ("Non-Settling Parties"), such alleged liability of the Non-Settling Parties shall be reduced in accordance with New Jersey law and the application of the Settlement funds to the State's Past Cleanup and Removal Costs and for natural resource damages ("NRD"). The Court shall take judicial notice of the amounts paid by the Settling Defendants under the Settlement Agreement 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 Defendants' alleged share of liability, there shall be no discovery by any party against the Settling Defendants, except in accordance with Paragraph 5 herein.

5. Until such time as the stay of Track IV is lifted, no party may conduct any discovery against any Settling Defendant, without leave of Court, except that Plaintiffs may take discovery of Maxus consistent with Paragraph 33 of the Settlement Agreement.

6. 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, except that:

- (a) Information designated as confidential may be used *not only* in this case but also in any proceeding that is severed from this case or any proceeding arising out of a cause of action that is reserved by any Party in accordance with the Settlement Agreement and is subsequently commenced under a different docket number;
- (b) Information designated as confidential may be used in any subsequent proceeding commenced by any governmental entity or any party to this case relating to the remediation, cost of remediation or NRD in the Newark Bay Complex; and
- (c) The Court will retain subject matter jurisdiction to determine whether information that has been produced and designated as confidential is entitled to be treated as confidential information, and an application to the Court to make such a determination may be submitted at any time.

7. The reservation Orders entered by this Court on December 15, 2010 and April 24, 2012, hereby remain in full force and effect, except as to claims settled or otherwise resolved in the Consent Judgment between Plaintiffs and Settling Third-Party Defendants, and the Settlement Agreement between Plaintiffs and Settling Defendants.

8. In accordance with Rule 4:30A, except as to claims settled, dismissed with prejudice or resolved pursuant to the Settlement Agreement or the Third-Party Defendant Consent Judgment, all other claims of Plaintiffs, Settling Defendants, and Settling Third-Party Defendants (including, but not limited to, those claims expressly reserved in the Settlement Agreement or the

Third-Party Defendant Consent Judgment) are hereby reserved during the pendency of, and after the conclusion of, this litigation.

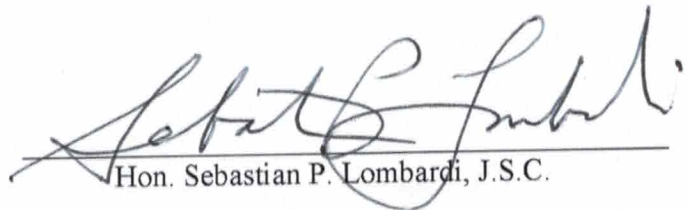
C. Consistency with the Settlement Agreement

This Case Management Order shall be construed consistently with and to effectuate the purposes of the Settlement Agreement and Dismissal Order, and any terms used herein shall be construed according to their definitions as set forth in the Settlement Agreement and Dismissal Order.

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

Upon approving the Settlement Agreement, any remaining claims against Non-Settling Third-Party Defendants are severed into a separate action or trial. Third-Party Plaintiffs shall have sixty (60) days to amend their pleadings against the Non-Settling Third-Party Defendants, including adding any additional claims or allegation, or may dismiss any or all alleged claims against any Non-Settling Third-Party Defendants without prejudice.

SO ORDERED.


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

Dated: 12/12/13

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