

Thomas A. Buonocore, Esq.
Law Offices of Thomas A. Buonocore, P.C.
1719 Route 10, Suite 301
Parsippany, New Jersey 07054
Tel: (973) 984-2588
Fax: (973) 984-6640
Attorneys for Third-Party Defendant,
Borden & Remington Corp.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF THE NEW JERSEY
ENVIRONMENTAL PROTECTION AGENCY,
and THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION FUND,

Plaintiff,

vs.

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

Defendants.

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY, *et al.*,

Third-Party Defendants.

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

CIVIL ACTION

**BORDEN & REMINGTON CORP.'S
ANSWER TO THIRD PARTY
COMPLAINT "B"**

**BORDEN & REMINGTON CORP.'S ANSWER TO
MAXUS ENERGY CORPORATION'S AND TIERRA
SOLUTIONS, INC.'S THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Borden & Remington Corp. ("Borden") by and through its undersigned counsel, and in accordance with this Court's Case Management Order V, entered April 16, 2009 ("CMO V"), without waiver of any kind, hereby answers Third-Party Complaint "B" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

Borden denies each and every allegation contained in Third Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "B".

AS TO PROCEDURAL BACKGROUND

1-11. No response is required pursuant to CMO V.

12. Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in paragraph 12 and leaves Third-Party Plaintiffs to their proofs.

13-15. No response is required pursuant to CMO V.

THE PARTIES

AS TO THE THIRD-PARTY PLAINTIFFS

16-18. No response is required pursuant to CMO V.

AS TO THE THIRD-PARTY DEFENDANTS

19-47. No response is required pursuant to CMO V.

48. Borden admits the allegations in Paragraph 48.

49-209. No response is required pursuant to CMO V.

210. Paragraph 210 states a legal conclusion as to which no response is required. To the extent a response is required, any applicable law speaks for itself, and Borden denies any allegations in Paragraph 210 inconsistent therewith.

AS TO DEFINITIONS

211-236. No response is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

237-3287. No response is required pursuant to CMO V.

Central Steel Drum Site

3288. Borden admits that the Central Steel Drum property is located in Newark, New Jersey but is without knowledge or information sufficient to form a belief as to the truth or veracity of the other allegations in paragraph 3288 and leaves Third-Party Plaintiffs to their proofs.

3289-3297. Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in paragraphs 3289 through 3297 and leaves Third-Party Plaintiffs to their proofs.

3298. Borden admits that an entity doing business as the Central Steel Drum Company owned and/or operated a drum reconditioning facility but is without knowledge or information sufficient to form a belief as to the truth or veracity the other allegations in paragraph 3298 and leaves Third-Party Plaintiffs to their proofs.

3299-3334. Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in paragraphs 3299 through 3334 and leaves Third-Party Plaintiffs to their proofs.

Central Steel Drum Site PRPs

3335-3342. Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in paragraphs 3335 through 3342 and leaves Third-Party Plaintiffs to their proofs.

3343-3357. Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in paragraphs 3343 through 3357 and leaves Third-Party Plaintiffs to their proofs.

3358. Borden admits that, during one or more years that the Central Steel Drum Site was operating, Borden owned and/or operated one or more chemical distribution and manufacturing facilities. Borden states that it is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in the second sentence of paragraph 3358 and leaves Third-Party Plaintiffs to their proofs.

3359. With respect to the first sentence of paragraph 3359, Borden admits that it sent a letter to the EPA dated January 15, 1998, states that the contents of that letter speak for themselves, and denies any allegations in said first sentence of paragraph 3359 inconsistent therewith. With respect to the second sentence of paragraph 3359, Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations and leaves Third-Party Plaintiffs to their proofs.

3360. Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in paragraph 3360 and leaves Third-Party Plaintiffs to their proofs.

3361-3400. Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations in paragraphs 3361 through 3400 and leaves Third-Party Plaintiffs to their proofs.

3401-3445. No response is required pursuant to CMO V.

FIRST COUNT

(New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a))

3446. Borden incorporates by reference its responses and denials as asserted in paragraphs 1 through 3445 as if fully set forth herein.

3447 - 3451. Paragraphs 3447-3451 contain Third-Party Plaintiffs' conclusions of law and therefore no answer is required. To the extent that these paragraphs are deemed to express facts,

Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations and leaves Third-Party Plaintiffs to their proofs.

WHEREFORE, Borden demands that Third-Party Plaintiffs' claims be dismissed with prejudice, and that Borden be allowed to recover its costs, including reasonable attorneys' fees, incurred in connection with the defense of this action.

SECOND COUNT

(Statutory Contribution)

3452. Borden incorporates by reference its responses and denials as asserted in paragraphs 1 through 3451 as if fully set forth herein.

3453. Paragraph 3453 contains the Third-Party Plaintiffs' conclusions of law and therefore no answer is required. To the extent that this paragraph is deemed to express facts, Borden is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations and leaves Third-Party Plaintiffs to their proofs.

WHEREFORE, Borden demands that Third-Party Plaintiffs' claims be dismissed with prejudice, and that Borden be allowed to recover its costs, including reasonable attorneys' fees, incurred in connection with the defense of this action.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Third-Party Complaint "B" fails to state a cause of action against Borden upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Borden is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 *et seq.* (the "Spill Act").

THIRD AFFIRMATIVE DEFENSE

The claims of the Third-Party Plaintiffs are barred, in whole or in part, by the statutory defenses provided by the Spill Act and/or N.J.S.A. 58-10A-1 *et seq.*, the Water Pollution Control Act.

FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have no Spill Act claim because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

FIFTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred, in whole or in part, by the entire controversy doctrine.

SIXTH AFFIRMATIVE DEFENSE

One or both of the Third-Party Plaintiffs do not have standing to sue.

SEVENTH AFFIRMATIVE DEFENSE

The claims of the Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

EIGHTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in Third-Party Complaint "B."

NINTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs are mere volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief. Consequently, the claims in Third-Party Complaint "B" are barred, in whole or in part.

TENTH AFFIRMATIVE DEFENSE

The claims brought by the Third-Party Plaintiffs reflect damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

ELEVENTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs cannot recover damages or maintain claims based on actions or inactions that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities ("Environmental Laws").

TWELFTH AFFIRMATIVE DEFENSE

The claims set forth in Third-Party Complaint "B" are barred, in whole or in part, because, as a matter of law, the Third-Party Plaintiffs' claims are derivative of, and cannot be any greater than, the claims that the State of New Jersey has or would have against Borden directly.

THIRTEENTH AFFIRMATIVE DEFENSE

Third-Party Complaint "B" is barred, in whole or in part, because the claims asserted are preempted by federal law.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims set forth in Third-Party Complaint "B" are barred and/or are constitutionally impermissible to the extent that they seek to impose retroactive liability for acts that were previously authorized or condoned by law.

FIFTEENTH AFFIRMATIVE DEFENSE

The claims set forth in Third-Party Complaint "B" are barred to the extent that they seek relief for damages incurred prior to the effective date of the Spill Act.

SIXTEENTH AFFIRMATIVE DEFENSE

At all relevant times, Borden complied with all applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent that the Third-Party Plaintiffs seek to recover for loss of use or loss of natural resources, the Third-Party Plaintiffs do not have standing to bring such claims.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Borden.

NINETEENTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrines of laches and estoppel.

TWENTIETH AFFIRMATIVE DEFENSE

The damages as alleged by the Third-Party Plaintiffs were caused by preexisting conditions over which Borden had no control.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Any acts or omissions of Borden, if any, relating to any Hazardous Substance, conformed to industry custom and practice.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred, in whole or in part, by the Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred because neither they nor Plaintiffs have incurred "costs of restoration and replacement ... of any natural resources damaged or destroyed by a discharge" under the Spill Act.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief cannot be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are not ripe for adjudication, because the Third-Party Plaintiffs have a joint liability to the Plaintiffs and have not paid and will not pay more than their fair or equitable share of the liability.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs have failed to present a justiciable controversy in that the operative facts in connection with any alleged remediation are future, contingent and uncertain and their claims should be dismissed.

TWENTY-NINTH AFFIRMATIVE DEFENSE

If the Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by the Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of the Third-Party Plaintiffs' agents or employees. In the event that the Third-Party Plaintiffs are found to have sustained any injury and are entitled to damages, the Third-Party Plaintiffs' recovery, if any, must be reduced by the proportionate damages caused by the acts and conduct of the Third-Party Plaintiffs and/or its agents or employees.

THIRTIETH AFFIRMATIVE DEFENSE

Although Borden denies that it is liable for the contamination described in Third-Party Complaint "B," in the event it is found liable, Borden is entitled to an offset against any such liability

on its part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to the Third-Party Plaintiffs.

THIRTY -FIRST AFFIRMATIVE DEFENSE

Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

THIRTY-SECOND AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred to the extent that the conduct of Borden alleged to give rise to liability in Third-Party Complaint "B" is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

THIRTY-THIRD AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

THIRTY -FOURTH AFFIRMATIVE DEFENSE

The damages or other relief that the Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

The relief sought in Third-Party Complaint "B" cannot be granted because liability under the Spill Act or otherwise is several and/or the harm alleged is divisible.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs cannot assert contribution claims because the discharges for which the Plaintiffs are seeking relief are different from Third-Party Defendants' alleged discharges.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Borden is not liable for "the same injury" caused by the Third-Party Plaintiffs' discharges and does not share a common liability to the State of New Jersey.

THIRTY -EIGHTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred, in whole or in part, because no actions or inactions have resulted in any permanent impairment or damage to a natural resource.

THIRTY-NINTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims for contribution, whether under the Spill Act or New Jersey law for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against the Third-Party Plaintiffs. Consequently, the Third-Party Plaintiffs' claims are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs pertaining to the alleged environmental contamination (including natural resource damage) of any site alleged by the Third-Party Plaintiffs to be the subject of their contribution claims.

FORTIETH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred to the extent the relief sought is at odds with Borden's responsibilities to conduct ongoing environmental cleanups under oversight of the Plaintiffs at any site(s) alleged by Third-Party Plaintiffs to be the subject of their claims against Borden, thereby exposing Borden to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTY-FIRST AFFIRMATIVE DEFENSE

To the extent Borden is acting or has acted to conduct environmental cleanup at any site(s) alleged by the Third-Party Plaintiffs to be the subject of their contribution claims against Borden, the claims for equitable contribution under the Spill Act in Third-Party Complaint "B" are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTY-SECOND AFFIRMATIVE DEFENSE

Without admitting liability, Borden alleges that if it is found to have been engaged in any of the activities alleged in Third-Party Complaint "B," such activities were de minimis and not the cause of any damages or other claims by the Third-Party Plaintiffs.

FORTY-THIRD AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs claims are not ripe, since clean up and remediation have not been completed.

FORTY-FOURTH AFFIRMATIVE DEFENSE

Borden reserves the right to assert and hereby invokes each and every defense that may be available during the course of this action.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Any and all damages allegedly sustained, or to be sustained, by the Third-Party Plaintiffs are the result of intervening or superseding acts or omissions of third parties over whom Borden had no control and is not responsible for.

FORTY-SIXTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are subject to recoupment and/or offset, including by any settlements entered into by the Third-Party Plaintiffs with any other party, and therefore, must be reduced accordingly.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred, in whole or in part, by their failure to properly mitigate damages.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, because they seek costs beyond costs allowed for under the Spill Act.

FORTY-NINTH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred because they seek damages, costs or expenses beyond costs for "cleanup" and "removal" as those terms are defined under the Spill Act.

FIFTIETH AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred because the relief sought against Borden, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

FIFTY-FIRST AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and/or assumption of risk.

FIFTY-SECOND AFFIRMATIVE DEFENSE

The Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrine of "coming to the nuisance."

FIFTY-THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent they seek to hold Borden liable, in contribution, for any claims for which it would be a violation of public policy to hold Borden liable, including but not limited to punitive damages and penalties.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent they seek to hold Borden liable for costs incurred in cleanup actions that were not reasonable and necessary and/or were not undertaken in a manner consistent with all applicable laws.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

Borden incorporates by reference any affirmative defense asserted by other parties in this action to the extent such affirmative defenses are defenses to the Third-Party Plaintiffs' claims and do not impose liability on Borden.

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Pursuant to R. 4:5-1(b)(2) and CMO V, the undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned.

COUNTERCLAIMS AND CROSSCLAIMS

In accordance with CMO V, Borden is not asserting any counterclaims or cross-claims at this time and reserves its right to do so as specified by the Court's Order.

TRIAL COUNSEL DESIGNATION PURSUANT TO R. 4:25-4

Borden hereby designates Thomas A. Buonocore, Esq. as trial counsel in the above matter.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Attorneys for Third-Party Defendant
BORDEN & REMINGTON CORP.



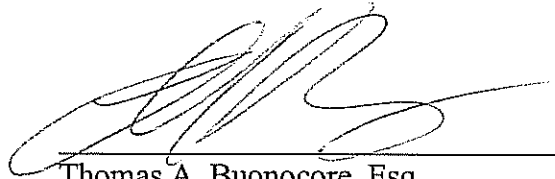
Thomas A. Buonocore, Esq.
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1719 Route 10, Suite 301
Parsippany, New Jersey 07054
(973) 984-2588

Dated: November 9, 2009

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THOMAS A. BUONOCORE
A Professional Corporation
Counsellors at Law
1719 Route 10, Suite 301
Parsippany, NJ 07054

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Third-Party Complaint "B" and Affirmative Defenses was filed with the Clerk of Court, Superior Court of New Jersey, Essex County, by Federal Express and was served upon all parties which have consented to electronic service by posting to <http://njdepvocc.sfile.com> on this day. All other Counsel of Record were served via first class, regular mail.



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