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Attorneys for Third-Party Defendant, Kao Brands Company

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al., Plaintiffs,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ESSEX COUNTY
	:	DOCKET NO: ESX-L-9868-05
v.	:	
	:	CIVIL ACTION
OCCIDENTAL CHEMICAL CORPORATION, et al., Defendants,	:	
	:	KAO BRANDS COMPANY’S ANSWER TO THIRD-PARTY COMPLAINT “B”
MAXUS ENERGY CORPORATION, et al., Third-Party Plaintiffs,	:	
v.	:	
3M COMPANY, et al., Third- Party Defendants.	:	

KAO BRAND COMPANY’S ANSWER TO THIRD-PARTY COMPLAINT “B”

Third-Party Defendant Kao Brands Company ("Kao Brands"), by and through its undersigned counsel, and in accordance with this Court’s Case Management Order V, Section 9, entered April 16, 2009 (“CMO V”), hereby answers the Third-Party Complaint “B” by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. (“Third-Party Plaintiffs”), as follows:

GENERALLY

1. Kao Brands 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

(Paragraphs 1 through 15)

2. Kao Brands responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 18)

3. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 209)

4. To the extent that the allegations in Paragraphs 19 through 118 relate to other parties, no response is required pursuant to CMO V.

5. Kao Brands admits the allegations of Paragraph 119.

6. To the extent that the allegations in Paragraphs 120 through 209 relate to other parties, no response is required pursuant to CMO V.

7. The allegations in Paragraph 210 state a legal conclusion as to which no response is required.

AS TO DEFINITIONS

8. Paragraphs 211 through 236 contain definitions. No response is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

9. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

10. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 424, and therefore denies the same.

11. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 425, and therefore denies the same.

12. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 426, and therefore denies the same.

13. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 427, and therefore denies the same.

14. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 428, and therefore denies the same.

15. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 429, and therefore denies the same.

16. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 430, and therefore denies the same.

17. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 431, and therefore denies the same.

18. Kao Brands denies the allegations in Paragraph 432 of the Third Party Complaint.

AS TO FIRST COUNT

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

19. Kao Brands incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 18 herein.

20. Kao Brands denies the allegations in Paragraph 3447 of the Third Party Complaint to the extent that they relate to Kao Brands. To the extent that the allegations in Paragraph 3447 relate to other parties, no response is required pursuant to CMO V.

21. The allegations contained in Paragraph 3448 of the Third Party Complaint set forth a legal conclusion to which no response is required.

22. Kao Brands denies the allegations in Paragraph 3449 of the Third Party Complaint to the extent that they relate to Kao Brands. To the extent that the allegations in Paragraph 3449 relate to other parties, no response is required pursuant to CMO V.

23. The allegations contained in Paragraph 3450 of the Third Party Complaint set forth a legal conclusion to which no response is required.

24. Kao Brands denies the allegations in Paragraph 3451 of the Third Party Complaint to the extent that they relate to Kao Brands. To the extent that the allegations in Paragraph 3451 relate to other parties, no response is required pursuant to CMO V.

AS TO SECOND COUNT

Statutory Contribution

25. Kao Brands incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 24 herein.

26. Kao Brands denies that it is liable to Third-Party Plaintiffs for contribution. Kao Brands is without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 3452 through 3453, and therefore denies the same.

WHEREFORE, Kao Brands respectfully requests that the Court enter an Order dismissing the Third-Party Complaint “B” with prejudice, and awarding costs, attorney fees and any other relief the Court deems just and proper.

FIRST AFFIRMATIVE DEFENSE

The Third-Party Complaint is barred in whole or in part as it fails to state a cause of action against Kao Brands upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Kao Brands is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. (“Spill Act”).

THIRD AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (“WPCA”).

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have no right of contribution against Kao Brands under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

To the extent the Third-Party Complaint purports to seek any relief under New Jersey’s Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Kao Brands under that statute.

EIGHTH AFFIRMATIVE DEFENSE

Some or all of Third-Party Plaintiffs do not have standing to sue.

NINTH AFFIRMATIVE DEFENSE

Upon information and belief, Third-Party Plaintiffs are mere corporate shells who are periodically infused with cash or equivalent contributions by other corporate

entities which money Third-Party Plaintiffs purport to use to address the environmental contamination at issue in this litigation. Consequently, the claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

TENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

Kao Brands cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Kao Brands 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 (“applicable Environmental Laws”).

FOURTEENTH THIRD AFFIRMATIVE DEFENSE

At common law, Kao Brands held, and still holds, a usufructuary interest allowing it, along with all other citizens, the reasonable use of assets held for the benefit of the public by the State of New Jersey under the Public Trust Doctrine. Kao Brands has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets. As a matter of law, 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 Kao Brands directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

The State of New Jersey is legally barred from asserting direct claims against Kao Brands for the damages sought in its Amended Complaint. Consequently, all claims that are or may be derivative of the State of New Jersey’s claims are barred as to the Kao Brands as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

The Third-Party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

SEVENTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs’ Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

At all relevant times, Kao Brands 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.

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted against Kao Brands in the Third-Party Complaint are barred because at all relevant times Kao Brands exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Kao Brands had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

TWENTIETH AFFIRMATIVE DEFENSE

The claims set forth in the Third-Party Complaint are barred in whole or in part by the doctrine of preemption.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Kao Brands.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Kao Brands 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.

TWENTY-THIRD AFFIRMATIVE DEFENSE

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.

TWENTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible of performance; (2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Kao Brands are subject to setoff and recoupment and therefore must be reduced accordingly.

THIRTIETH AFFIRMATIVE DEFENSE

Kao Brands did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation to, Third-Party Plaintiffs' have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs' have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

THIRTY-SECOND AFFIRMATIVE DEFENSE

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.

THIRTY-THIRD AFFIRMATIVE DEFENSE

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 can not be afforded the existing parties pursuant to R. 4:28-1 of the

New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the “Newark Bay Complex,” as defined in Plaintiffs’ Second Amended Complaint.

THIRTY-FOURTH THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs’ claims are not ripe for adjudication, inter alia, because 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.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Kao Brands denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Kao Brands exercised no control and for whose conduct Kao Brands was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

If Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs’ own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party

Plaintiffs' agents or employees. In the event that Third-Party Plaintiffs are found to have sustained any injury and are entitled to damages, Third-Party Plaintiffs' recovery against Kao Brands, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or its agents or employees.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Although Kao Brands denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Kao Brands 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 Third-Party Plaintiffs.

THIRTY-EIGHTH 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-NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Third-Party Complaint 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.

FORTIETH AFFIRMATIVE DEFENSE

The disposal of waste, if any, which allegedly originated from Kao Brands, was undertaken in accordance with the then state of the art, the then accepted industrial

practice and technology, and the then prevailing legal requirements for which Kao Brands cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not entitled to recover from Kao Brands to the extent that any discharge that allegedly originated from Kao Brands, was investigated and remediated by a licensed professional and under the direct oversight of state and/or federal agencies with the then state of the art, the then accepted industrial practice and technology, and the then prevailing requirements for which Kao Brands cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred due to its own conduct in unilaterally, and without notice to Kao Brands, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al.*

v. *United States, et al.*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant(s) are not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and do not share a common liability to the State of New Jersey.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-

Party Plaintiffs' claims against Kao Brands are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Kao Brands pertaining to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Kao Brands. Examples of legal extinguishments that are or may be applicable to Kao Brands include, with respect to each such site:

1. Any release or covenant not to sue granted by Plaintiffs to Kao Brands;
2. Any settlement or other compromise between Plaintiffs and Kao Brands;
3. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Kao Brands;
4. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in the Third-Party Complaint) in a prior litigation between Plaintiffs and Kao Brands, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or
5. Any issuance by Plaintiffs to Kao Brands, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred because the relief sought against Kao Brands, were it claimed directly by Plaintiffs, would amount to a "taking" of Kao Brands' property in violation of its constitutional rights to due process and/or in violation of its rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 *et seq.*

FIFTY SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Third-Party Complaint is at odds with Kao Brands' 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 contribution claims against Kao Brands, thereby exposing Kao Brands to inconsistent

responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (*i.e.*, double recovery).

FIFTY THIRD AFFIRMATIVE DEFENSE

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

FIFTY FOURTH AFFIRMATIVE DEFENSE

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

FIFTY FIFTH AFFIRMATIVE DEFENSE

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

FIFTY SIXTH AFFIRMATIVE DEFENSE

Kao Brands reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS

27. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

DESIGNATION OF TRIAL COUNSEL

28. In accordance with Rule 4:25-4, Charles W. Miller III, Esq. is hereby designated as trial counsel for Kao Brands.


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

Undersigned counsel hereby certifies, in accordance with Rule 4:5-1(b)(2), that:
(a) the matters in controversy in this action are not the subject of any other known or pending court action or arbitration proceeding (though the same may become the subject of a federal action pursuant to certain federal environmental statutes) and (b) reference is made to that October 20, 2009 "Additional Discharger" posting by O'Melveny and Myers as to non-parties who may be joined to this action pursuant to Rule 4:28, or who may be subject to joinder pursuant to Rule 4:29-1

Respectfully submitted,

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Dated: January 4, 2010

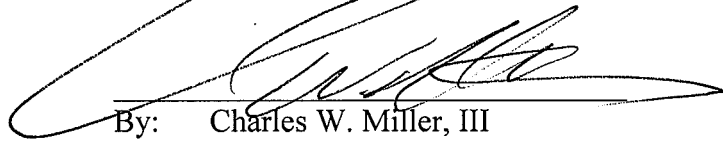

By: Charles W. Miller, III
A Member of the Firm

3. On January 4, 2010, I also filed same via the sfile website, which will be distributed to all counsel who have consented to such service.

4. On January 4, 2010, I also mailed a copy, via regular mail, to all counsel who have not consented to service by electronic posting.

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

Dated: January 4, 2010


By: Charles W. Miller, III