

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania

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Attorneys for Third-Party Defendant STWB, Inc.

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,

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,

MAXUM ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, A.C.C., INC., ACH FOOD
COMPANIES, INC., ACTIVE OIL
SERVICE, ADCO CHEMICAL COMPANY,
AGC CHEMICALS AMERICAS, INC.,
ALDEN-LEEDS, INC., ALLIANCE
CHEMICAL, INC., ALUMAX MILL
PRODUCTS, INC., AMCOL REALTY CO.,

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

Civil Action

AMERICAN INKS AND COATINGS
CORPORATION, APEXICAL, INC.,
APOLAN INTERNATIONAL, INC.,
ARKEMA, INC., ASHLAND INC.,
ASHLAND INTERNATIONAL HOLDINGS,
INC., ASSOCIATED AUTO BODY &
TRUCKS, INC., ATLAS REFINERY, INC.,
AUTOMATIC ELECTRO-PLATING CORP.,
AKZO NOBEL COATINGS, INC., BASF
CATALYSTS LLC, BASF CONSTRUCTION
CHEMICALS INC., BASF CORPORATION,
BAYER CORPORATION, BEAZER EAST,
INC., BELLEVILLE INDUSTRIAL
CENTER, BENJAMIN MOORE &
COMPANY, BEROL CORPORATION,
B-LINE TRUCKING, INC., BORDEN &
REMINGTON CORP., C.S. OSBORNE &
CO., CAMPBELL FOUNDRY COMPANY,
CASCHEM, INC., CBS CORPORATION,
CELANESE LTD., CHEMICAL
COMPOUNDS INC., CHEMTURA
CORPORATION, CLEAN EARTH OF
NORTH JERSEY, INC., COSMOPOLITAN
GRAPHICS CORPORATION, CIDA
CORPORATION, COLTEC INDUSTRIES
INC., COLUMBIA TERMINALS, INC.,
COMO TEXTILE PRINTS, INC., CONAGRA
PANAMA, INC.; CONOPCO, INC.,
CONSOLIDATED RAIL CORPORATION,
COOK & DUNN PAINT CORPORATION,
COSAN CHEMICAL CORPORATION,
COY ANT A ESSEX COMPANY,
CRODA, INC., CRUCIDLE MATERIALS
CORPORATION, CURTISS-WRIGHT
CORPORATION, CWC INDUSTRIES, INC.,
DARLING INTERNATIONAL, INC., DAV
ANNE REALTY CO., DELEET
MERCHANDISING CORPORATION,
DELVAL INK AND COLOR,
INCORPORATED, DILORENZO
PROPERTIES COMPANY, L.P., E.I. DU
PONT DE NEMOURS AND COMPANY,
EASTMAN KODAK COMPANY, EDEN
WOOD CORPORATION, ELAN
CHEMICAL COMPANY, INC., EM
SERGEANT PULP & CHEMICAL CO.,

EMERALD HILTON DAVIS, LLC,
ESSEX CHEMICAL CORPORATION,
EXXON MOBIL F.E.R. PLATING, INC.,
FINE ORGANICS CORPORATION,
FISKE BROTHERS REFINING COMPANY,
FLEXON INDUSTRIES CORPORATION,
FLINT GROUP INCORPORATED, FORT
JAMES CORPORATION, FOUNDRY
STREET CORPORATION, FRANKLIN-
BURLINGTON PLASTICS, INC.,
GARFIELD MOLDING COMPANY, INC.,
GENERAL CABLE INDUSTRIES, INC.;
GENERAL DYNAMICS CORPORATION,
GENERAL ELECTRIC COMPANY,
GENTEK HOLDING LLC, GIV AUDAN
FRAGRANCES CORPORATION, G. J.
CHEMICAL CO., GOODY PRODUCTS,
INC., GORDON TERMINAL SERVICE CO.
OF N.J., INC., HARRISON SUPPLY
COMPANY, HARTZ MOUNTAIN
CORPORATION, HAVENICK
ASSOCIATES L.P., HEXCEL
CORPORATION, HEXION SPECIALTY
CHEMICALS, INC., HOFFMANN-LA
ROCHE INC., HONEYWELL
INTERNATIONAL INC., HOUGHTON
INTERNATIONAL INC., HUDSON TOOL &
DIE COMPANY, INC, HY -GRADE
ELECTROPLATING CO., ICI AMERICAS
INC., INNOSPEC ACTIVE CHEMICALS
LLC, INX INTERNATIONAL INK CO.,
ISP CHEMICALS INC., ITT
CORPORATION, KEARNY SMELTING &
REFINING CORP., KAO BRANDS
COMPANY, KOEHLER-BRIGHT STAR,
INC., LINDE, INC., LUCENT
TECHNOLOGIES, INC., MACE
ADHESIVES & COATINGS COMPANY,
INC., MALLINCKRODT INC., MERCK &
CO., INC., METAL MANAGEMENT
NORTHEAST, INC., MI HOLDINGS, INC.,
MILLER ENVIRONMENTAL GROUP,
INC., MORTON INTERNATIONAL, INC.,
N L INDUSTRIES, INC., NAPPWOOD
LAND CORPORATION, NATIONAL FUEL
OIL, INC., NATIONAL-STANDARD, LLC,

NELL-JOY INDUSTRIES, INC., NESTLE U.S.A., INC., NEW JERSEY TRANSIT CORPORATION, NEWS AMERICA, INC., NEWS PUBLISHING AUSTRALIA LIMITED, NORP AK CORPORATION, NOVELIS CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC., OTIS ELEVATOR COMPANY, PRC-DESOTO INTERNATIONAL, INC., PASSAIC PIONEERS PROPERTIES COMPANY, PFIZER INC., PHARMACIA CORPORATION, PHELPS DODGE INDUSTRIES, INC., PHILBRO, INC., PITT -CONSOL CHEMICAL COMPANY, PIVOTAL UTILITY HOLDINGS, INC., PPG INDUSTRIES, INC., PRC-DESOTO INTERNATIONAL, INC., PRAXAIR, INC., PRECISION MANUFACTURING GROUP, LLC, PRENTISS INCORPORATED, PROCTER & GAMBLE MANUFACTURING COMPANY, PRYSMIAN COMMUNICATIONS CABLES AND SYSTEMS USA LLC, PSEG FOSSIL LLC, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, PURDUE PHARMA TECHNOLOGIES, INC., QUALA SYSTEMS, INC., QUALITY CARRIERS, INC., RECKITT BENCKISER, INC., REICHHOLD, INC., REVERE SMELTING & REFINING CORPORATION, REXAM BEVERAGE CAN COMPANY, ROMAN ASPHALT CORPORATION, ROYCE ASSOCIATES, A LIMITED PARTNERSHIP, R.T. VANDERBILT COMPANY, INC., RUTHERFORD CHEMICALS LLC, S&A REALTY ASSOCIATES, INC., SCHERING CORPORATION, SEQUA CORPORATION, SETON COMPANY, SIEMENS WATER TECHNOLOGIES CORP., SINGER SEWING COMPANY, SPECTRASERV, INC., STWB, INC., SUN CHEMICAL CORPORATION, SVP WORLDWIDE, LLC, TATE & LYLE INGREDIENTS AMERICAS, INC., TEV A PHARMACEUTICALS USA, INC., TEV AL CORP., TEXTRON INC., THE DIAL CORPORATION, THE DUNDEE WATER

POWER AND LAND COMPANY, THE NEWARK GROUP, INC., THE OKONITE COMPANY, INC., THE SHERWIN-WILLIAMS COMPANY, THE STANLEY WORKS, THE VAL SPAR CORPORATION, THIRTY-THREE QUEEN REALTY INC., THREE COUNTY VOLKSWAGEN CORPORATION, TIDEWATER BALING CORP., TIFFANY & CO., TIMCO, INC., TRIMAX BUILDING PRODUCTS, INC., TROY CHEMICAL CORPORATION, INC., UNIVERSAL OIL PRODUCTS COMPANY, V. OTTILIO & SONS, INC., VELSICOL CHEMICAL CORPORATION, VEOLIA ES TECHNICAL SOLUTIONS, L.L.C., VERTELLUS SPECIALTIES INC., VITUSA CORP., VULCAN MATERIALS COMPANY, W.A.S. TERMINALS CORPORATION, W.A.S. TERMINALS, INC., W.C. INDUSTRIES, WHITTAKER CORPORATION, WIGGINS PLASTICS, INC., ZENECA INC.,

Third-Party Defendants.

**THIRD-PARTY DEFENDANT, STWB INC.'S ANSWER TO MAXUS ENERGY CORPORATION'S AND TIERRA SOLUTIONS, INC.'S
THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant STWB, Inc. ("STWB"), having its principal place of business at 100 Bayer Road, Pittsburgh, Pennsylvania, by way of answer to the Third-Party Complaint "B" of Third-Party Plaintiffs, Maxus Energy Corporation and Tierra Solutions, Inc., says:

PROCEDURAL BACKGROUND

1-15. Paragraphs 1 to 15 do not relate to STWB. STWB is without knowledge or information sufficient to admit or deny the allegations.

THE PARTIES

Third-Party Plaintiffs

16-18. Paragraphs 16 to 18 do not relate to STWB. STWB is without knowledge or information sufficient to admit or deny the allegations.

Third-Party Defendants

175. Paragraphs 19 to 175 do not relate to STWB. STWB is without knowledge or information sufficient to admit or deny the allegations.

176. Admitted.

176-210. Paragraphs 80 to 210 do not relate to STWB. STWB is without knowledge or information sufficient to admit or deny the allegations.

DEFINITIONS

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

FACTUAL ALLEGATIONS

237-1496. Paragraphs 237-1496 do not relate to STWB. STWB is without knowledge or information sufficient to admit or deny the allegations.

Hilton Davis Site

1497. Denied.

Emerald Hilton Davis LLC

1498. Denied knowledge.

1499. Denied knowledge.

1500. Denied.

1501. Admitted.

- 1502. Admitted.
- 1503. Denied knowledge.
- 1504. Denied knowledge.
- 1505. Denied knowledge.
- 1506. Denied knowledge.

STWB, Inc. and Eastman Kodak

- 1507. Denied knowledge.
- 1508. Admitted.
- 1509. Denied.
- 1510. Admitted.
- 1511. Admitted.
- 1512. Denied knowledge.
- 1513. Denied knowledge.
- 1514. Denied.
- 1515. Admitted.
- 1516. Denied.
- 1517. Admitted.
- 1518. Denied knowledge.
- 1519. Admitted.
- 1520. Denied knowledge.
- 1521. Denied knowledge.
- 1522. Denied knowledge.
- 1523. Denied.

1524. Denied knowledge.

1525. Denied knowledge.

1526. Denied knowledge.

1527. Denied knowledge.

1528. Admitted in part/denied in part. The allegations pleaded in this paragraph are neither admitted nor denied as the General Notice Letter referenced in the paragraph speaks for itself.

1529. Denied knowledge.

1530. Denied.

1531. Admitted.

1532. Denied.

1533. Denied.

1534. Denied.

1535-3445. Paragraphs 1535 to 3445 do not relate to STWB. STWB is without knowledge or information sufficient to admit or deny the allegations.

First Count

3446. STWB repeats and realleges its responses to the allegations contained in ¶¶ 1-3445 of the Complaint as if fully set forth herein.

3447. Denied.

3448. Denied because the allegations pleaded in this paragraph are neither admitted nor denied as the Act referenced within this paragraph speaks for itself.

3449. Denied because the allegations pleaded in this paragraph constitute legal conclusions to which no response is required. To the extent a response may be required, STWB denies the allegations of this paragraph.

3450. Denied.

3451. Denied as the allegations pleaded in this paragraph constitute legal conclusions to which no response is required. To the extent a response may be required, STWB denies the allegations of this paragraph.

Second Count

3452. STWB repeats and realleges its responses to the allegations contained in ¶¶ 1-3452 of the Complaint as if fully set forth herein.

3453. The allegations pleaded in this paragraph constitute legal conclusions to which no response is required. To the extent a response may be required, STWB denies the allegations of this paragraph.

SEPARATE DEFENSES

STWB, without admitting any liability, hereby asserts the following defenses:

FIRST SEPARATE DEFENSE

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

SECOND SEPARATE DEFENSE

STWB 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 SEPARATE 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 SEPARATE DEFENSE

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

FIFTH SEPARATE DEFENSE

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

SIXTH SEPARATE DEFENSE

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

SEVENTH SEPARATE DEFENSE

The Third-Party Complaint is barred, in whole or in part, because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue STWB under New Jersey’s Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq.

EIGHTH SEPARATE DEFENSE

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

NINTH SEPARATE 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 SEPARATE 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 SEPARATE DEFENSE

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

TWELFTH SEPARATE DEFENSE

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

THIRTEENTH SEPARATE DEFENSE

STWB cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by STWB 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 SEPARATE DEFENSE

At common law, STWB 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. STWB 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 STWB directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH SEPARATE DEFENSE

The State of New Jersey is legally barred from asserting direct claims against STWB 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 STWB as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH SEPARATE 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 SEPARATE 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 SEPARATE DEFENSE

At all relevant times, STWB 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 SEPARATE DEFENSE

The claims asserted against STWB in the Third-Party Complaint are barred because at all relevant times STWB 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 STWB 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 SEPARATE DEFENSE

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

TWENTY-FIRST SEPARATE DEFENSE

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

TWENTY-SECOND SEPARATE DEFENSE

Third-Party Plaintiffs' claims against STWB 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 SEPARATE 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 SEPARATE DEFENSE

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

TWENTY-FIFTH SEPARATE DEFENSE

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

TWENTY-SIXTH SEPARATE 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 SEPARATE 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 SEPARATE DEFENSE

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

TWENTY-NINTH SEPARATE DEFENSE

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

THIRTIETH SEPARATE DEFENSE

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

THIRTY-FIRST SEPARATE 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 SEPARATE 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 SEPARATE 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 SEPARATE 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 SEPARATE DEFENSE

STWB 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 STWB exercised no control and for whose conduct STWB was not responsible including, without limitation, unpermitted and storm event discharges from publicly owned treatment works.

THIRTY-SIXTH SEPARATE 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 STWB, 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 SEPARATE DEFENSE

Although STWB denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, STWB 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 SEPARATE 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 SEPARATE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent that the conduct of STWB 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 SEPARATE DEFENSE

The disposal of waste, if any, which allegedly originated from STWB, 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 STWB cannot be found retroactively liable.

FORTY-FIRST SEPARATE DEFENSE

Any discharge that allegedly originated from STWB, 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 STWB cannot be found retroactively liable.

FORTY-SECOND SEPARATE 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 SEPARATE 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 SEPARATE DEFENSE

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

FORTY-FIFTH SEPARATE DEFENSE

STWB's 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 SEPARATE DEFENSE

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

FORTY-SEVENTH SEPARATE DEFENSE

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because STWB is 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 SEPARATE DEFENSE

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

FORTY-NINTH SEPARATE DEFENSE

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

FIFTIETH SEPARATE 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 STWB are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against STWB 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 STWB. Examples of legal extinguishments that are or may be applicable to STWB include, with respect to each such site:

1. Any release or covenant not to sue granted by Plaintiffs to STWB;
2. Any settlement or other compromise between Plaintiffs and STWB;
3. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against STWB;
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 STWB, 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 STWB, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY-FIRST SEPARATE DEFENSE

Third-Party Plaintiffs' claims are barred because the relief sought against STWB, were it claimed directly by Plaintiffs, would amount to a "taking" of STWB's 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 SEPARATE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with STWB'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 contribution claims against STWB, thereby exposing STWB to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FIFTY-THIRD SEPARATE DEFENSE

To the extent STWB 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 STWB, 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 SEPARATE DEFENSE

Without admitting liability, STWB 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 SEPARATE DEFENSE

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

FIFTY-SIXTH SEPARATE DEFENSE

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

DENIAL OF ALL COUNTERCLAIMS AND CROSS-CLAIMS, AMENDED OR OTHERWISE, FOR COMMON LAW CONTRIBUTION AND INDEMNIFICATION

1. STWB incorporates by reference its responses to the Complaint as if set forth at length herein.
2. Pursuant to R. 4:7-5(b), all cross claims and/or counterclaims for statutory and/or common law contribution and indemnification asserted by other parties against STWB,

whether filed in the past or future, are deemed denied by STWB without the need for responsive pleadings.

DEMAND FOR STATEMENT OF DAMAGES

A written statement specifying the amount of damages claimed by *any* party is hereby requested pursuant to R. 4:5-2 within five (5) days of service.

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania
Attorneys for Third-Party Defendant,
STWB, Inc.

By: 

Jeffrey M. Pollock, Esq.

Dated: November 20, 2009

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

Pursuant to R. 4:5-1(b)(2), the undersigned hereby certifies that:

(a) The matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceedings and no action or arbitration proceeding is contemplated by the undersigned; and

(b) Since it is the legal position of the undersigned that the potential liability, if any, of a Third-Party Defendant for the claims set forth in the Third-Party Complaint "B" is several only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that

(c) In the event the Court shall determine that the potential liability of a Third-Party Defendant, if any, for the claims set forth in the Third-Party Complaint "B" is in any respect joint and several (which is denied), then all or some of the non-parties listed on the attachments to the letter dated October 7, 2009 from Eric Rothenberg, Esq. of O'Melveny and Myers to the Honorable Marina Corodemus may constitute non-parties who should be joined in the action pursuant to R. 4:28; and

(d) In either event, some or all of such non-parties are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania
Attorneys for Third-Party Defendant,
STWB, Inc.

By: 

Jeffrey M. Pollock, Esq.

Dated: November 20, 2009

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1, Third-Party Defendant, STWB, Inc. designates Jeffrey M. Pollock as trial counsel in the within matter.

FOX ROTHSCCHILD LLP

Formed in the Commonwealth of Pennsylvania
Attorneys for Third-Party Defendant,
STWB, Inc.

By: _____

Jeffrey M. Pollock, Esq.

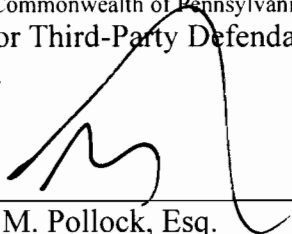
Dated: November 20, 2009

REQUEST FOR COPIES OF INSURANCE AGREEMENTS

Pursuant to R. 4:10-2(b), STWB requests copies of any and all documents relating to the existence and contents of all insurance agreements -- including the agreements themselves -- under which any person carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered or to indemnify or reimburse for payments made to satisfy the judgment. The within request applies to all parties in this action, including Third-Party Plaintiffs and all of the other Third-Party Defendants.

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania
Attorneys for Third-Party Defendant,
STWB, Inc.

By: 
Jeffrey M. Pollock, Esq.

Dated: November 20, 2009

CERTIFICATION OF SERVICE

Pursuant to R. 4:6 and R. 1:5, I certify that a copy of the Answer of STWB, Inc., to Third Party Complaint "B" and Civil Case Information Statement upon counsel for the parties who have consented to service by electronic posting on the following website, <http://njdepvocc.sfile.com> on November 20, 2009; all other counsel were served by regular first class mail.

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

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania
Attorneys for Third-Party Defendant,
STWB, Inc.

By: _____

Jeffrey M. Pollock, Esq.

Dated: November 20, 2009