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Attorney for Third-Party Defendant
Tiffany and Company

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

Plaintiffs

v.

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

Defendants.

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. L-9868-05 (PASR)

CIVIL ACTION

TIFFANY AND COMPANY'S ANSWER TO

THIRD-PARTY COMPLAINT "B"

Third-Party Defendant Tiffany and Company ("Tiffany"), by and through its undersigned counsel, hereby answers the Third-Party Complaint "B" asserted by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

1. Tiffany responds that the referenced pleadings speak for themselves. To the extent a response is required, Tiffany is without knowledge or information sufficient to form a belief as to the matters in Paragraphs 1 through 15, and therefore denies the same.

THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 18)

2. Tiffany is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 16 through 18, and therefore denies the same.

THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 209)

3. The allegations in Paragraphs 19 through 194 relate to other parties. Accordingly, Tiffany is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 19 through 194, and therefore denies the same.

4. Tiffany admits the allegations in Paragraph 195.

5. Tiffany is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 196 through 209, and therefore denies the same.

6. Tiffany admits the allegations in Paragraph 210, that it is a “person” within the meaning of the Spill Act, N.J.S.A. §58:10-23.11b.o., but denies the allegations as they relate to other parties.

DEFINITIONS

7. Paragraphs 211 through 236 contain definitions to which no response is required.

FACTUAL ALLEGATIONS

8. Tiffany believes no response is necessary, however, to the extent a response required, Tiffany is without knowledge or information sufficient to form a belief as to the matters alleged in Paragraphs 237 through 2853, and therefore denies the same.

9. Tiffany & Co. did not own the site alleged in Paragraph 2854. The property was owned by Tiffany and Company until 1985 when it was sold. To the extent the allegations of Paragraph 2854 are inconsistent with the foregoing, they are denied.

10. The allegations of Paragraph 2855 are denied. The former "Tiffany Site" is approximately one mile from the Passaic River. Because the Tiffany Site was remote when it was constructed, Tiffany constructed a 100,000 gallon cistern for storm water. Once the Passaic Valley Sewerage Commission ("PVSC") installed sewer lines, the water from the cistern when it was full went to PVSC. There were no reported episodes of any overflow from the Tiffany Site by PVSC. The cistern held approximately one month's water usage.

11. Tiffany and Company became a wholly owned subsidiary of Tiffany & Co. in 1984. The remaining allegations in Paragraph 2856 are substantially correct.

12. Tiffany and Company admits it operated a manufactory of silver, paper and other goods that included a silver smelting operation at the Tiffany Site, to the extent the allegations of Paragraph 2857 are inconsistent therewith they are denied. The purchasers of the Tiffany Site constructed housing units for sale and converted the foregoing into either condominiums or apartments, called "Tiffany Manor."

13. As part of silver smelting, a small amount of nitric acid was used and washed into settling tanks. Tiffany used the settling tanks to recover any extraneous silver, as silver was and is a precious metal. These tanks were called metal recovery tanks. The

tanks were scrubbed for silver once a month. Water went from the pits to the cistern. Tiffany did not discharge process waste water directly to PVSC, but recovered its metallic waste prior to any discharge the PVSC. The 1972 PVSC report referred to in Paragraph 2858 is not attached to the complaint and Tiffany lacks information or knowledge to respond thereto. In 1983, the volume of water discharged was approximately 2,000,000 gallons a year. No permit violations were cited by PVSC, the permitting authority for any violation of Tiffany's permit with PVSC.

14. Tiffany denies that any process waste water was discharged as alleged in Paragraph 2859. Tiffany had the means to retain storm water on site. No citations or information was ever provided to Tiffany that indicated any of the water from Tiffany was discharged to the Passaic River. Tiffany admits that its former property was within the Verona Avenue CSO District.

15. In complying with Environmental Cleanup and Responsibility Act of 1983 (ECRA), Tiffany analyzed the soil on site, some contamination of the soils was found, excavated, and removed. New Jersey Department of Environmental Protection (NJDEP) issued a no further action upon completion of the soils removal. Tiffany asserts that the contaminants of concern were lead, which required 12 cubic yards of removal; petroleum hydrocarbons which required 25 cubic yards of removal; and silver and or cyanide which consisted of 1 cubic yard of removal. Sampling referred to in Paragraph 2860 has not been sufficiently identified in the Third-Party Complaint and to the extent the allegations are inconsistent with the foregoing, they are denied.

16. Geraghty & Miller performed a hydrogeological investigation and concluded that no groundwater remediation was required as there was no volatile organic

compounds (“VOCs”) in the soil on the Tiffany Site and VOCs were in the upgradient well indicating an off-site source. Sampling referred to in Paragraph 2861 appears inconsistent with the sampling results of Geraghty & Miller and those allegations are denied.

17. Tiffany lacks sufficient information or knowledge as to the direction of groundwater flow. Tiffany asserts any contamination in the groundwater, as concluded by Geraghty & Miller, is from an off-site upgradient source. Therefore, Tiffany denies the allegations of Paragraph 2862.

18. The allegations of Paragraph 2863 are denied. Tiffany received ECRA clearance for its site for soils and groundwater. After nearly 100 years, soil removal was very limited and no groundwater contamination was found to be the responsibility of Tiffany.

19. On information and belief, the Third-Party Plaintiffs urged the EPA, on the bases of an inadequate factual foundation presented to the EPA which issued a General Notice Letter. Tiffany admits it received such a general notice letter, as alleged in Paragraph 2864, but denies that the issuance of such a letter resulted from the Release of Hazardous Substances from the Tiffany Site.

20. Tiffany denies the allegations of Paragraph 2865

21. Tiffany believes no response is necessary to the Paragraphs 2866 through 3445, however, to the extent a response required, Tiffany is without knowledge or information sufficient to form a belief as to the matters alleged in said Paragraphs 2866 through 3445, and therefore denies the same.

FIRST COUNT

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

22. Tiffany incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 21 herein.

23. Tiffany is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3447 through 3448, and therefore denies the same.

24. Tiffany denies that it is liable to Third-Party Plaintiffs for contribution. Tiffany is without knowledge or information sufficient to form a belief as to the truth of the asserted matters in Paragraphs 3449 through 3451, and therefore denies the same.

SECOND COUNT

STATUTORY CONTRIBUTION

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

26. Tiffany denies that it is liable to Third-Party Plaintiffs for contribution. Indeed, Tiffany have received from New Jersey Department of Environmental Protection (NJDEP) as to the Tiffany Site a letter stating Tiffany was in full compliance with the clean up responsibilities under Environmental Cleanup and Responsibility Act of 1983 ("ECRA") cannot be liable in contribution for any claim made by NJDEP. Tiffany 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.

CLAIM FOR ATTORNEY FEES AND COSTS UNDER N.J.S.A. 2A:15-59.1

27. Tiffany incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 26 herein.

28. Pursuant to N.J.S.A. 2A:15-59.1, Tiffany hereby makes claim for costs and attorney fees as the claims asserted herein are barred as a matter of law and are frivolous within the meaning of said statute. In this matter the Plaintiff, NJDEP, has determined that Tiffany did not contaminate the ground water and complied in all respects with the ECRA and is therefore entitled to contribution protection.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

30. Third-Party Defendant 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

31. Claims of third-party plaintiffs, their agents, employees, successors and assigns are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act ("WPCA").

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

33. Third-Party Plaintiffs' claims are barred by the entire controversy doctrine.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

35. The damages sought by Third-Party Plaintiffs are wholly speculative, conjectural, unreasonable, excessive, and/or arbitrary and capricious.

EIGHTH AFFIRMATIVE DEFENSE

36. Third-Party Defendant cannot be liable for or be required to pay Third-Party Plaintiffs' damages that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State 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").

NINTH AFFIRMATIVE DEFENSE

37. 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.

TENTH AFFIRMATIVE DEFENSE

38. 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.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

40. The claims asserted against Third-Party Defendant in the Complaint are barred because at all relevant times Third-Party Defendant exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, 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 Third-Party Defendant 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.

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH THIRD AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

43. Third-Party Plaintiffs' claims against Third-Party Defendant 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.

SIXTEENTH AFFIRMATIVE DEFENSE

44. 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.

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

46. 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.

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

50. Third-Party Defendant did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA, N.J.S.A.

TWENTY-THIRD AFFIRMATIVE DEFENSE

51. 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.

TWENTY-FOURTH THIRD AFFIRMATIVE DEFENSE

52. 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-FIFTH AFFIRMATIVE DEFENSE

53. 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* including, without limit, State of New Jersey agencies and instrumentalities, including without limit Trustees for tidelands, and United States agencies and instrumentalities with liability under the Spill Act.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

54. 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 more than their equitable share of the liability.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

55. Third-Party Defendant 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 Third-Party Defendant exercised no control and for whose conduct Third-Party Defendant was not responsible including, without limit, unpermitted and storm event discharges from publicly owned treatment works.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

56. 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 Third-Party Defendant, 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.

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

58. 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-FIRST AFFIRMATIVE DEFENSE

59. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Complaint is the subject of a release,

covenant not to sue, or otherwise excused by Plaintiffs, including, without limit, through issuance of a no further action letter, consent order, settlement agreement or other applicable document.

THIRTY-SECOND AFFIRMATIVE DEFENSE

60. The disposal of waste, if any, which allegedly originated from Third-Party Defendant, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements.

THIRTY-THIRD AFFIRMATIVE DEFENSE

61. Any discharge that allegedly originated from Third-Party Defendant, 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.

THIRTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

63. The damages Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

65. Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims by Third Parties 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.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

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

THIRTY-NINTH AFFIRMATIVE DEFENSE

67. 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.

FORTIETH AFFIRMATIVE DEFENSE

68. Third-Party Defendant incorporates by reference any affirmative 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 Third-Party Defendant.

FORTY-FIRST AFFIRMATIVE DEFENSE

69. Third-Party Defendant reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

FORTY-SECOND AFFIRMATIVE DEFENSE

70. Third-Party Plaintiffs' claims are barred to the extent they seek to hold Third-Party Defendant liable, in contribution, for any claims for which it would be a violation of

public policy to hold Third-Party Defendant liable, including but not limited to punitive damages and penalties.

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH AFFIRMATIVE DEFENSE

72. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 et seq.), are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Third-Party Defendant are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Third-Party Defendant 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 Third-Party Defendant. Examples of legal extinguishments that are or may be applicable to Third-Party Defendant include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
- B. Any settlement or other compromise between Plaintiffs and Third-Party Defendant;
- C. Any expiration of the statute of limitations governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
- D. 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 Third-Party Defendant, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or

- E. Any issuance by Plaintiffs to Third-Party Defendant, directly or indirectly, of any “No Further Action” (a/k/a “NFA”) determination, “Negative Declaration,” or similar determination.

FORTY-FIFTH AFFIRMATIVE DEFENSE

73. Third-Party Plaintiffs’ claims are barred because the relief sought against Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to a “taking” of Third-Party Defendant’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.*

FORTY-SIXTH AFFIRMATIVE DEFENSE

74. 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 Third-Party Defendant’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 Third-Party Defendant, thereby exposing Third-Party Defendant to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTY-SEVENTH AFFIRMATIVE DEFENSE

75. To the extent Third-Party Defendant 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 Third-Party Defendant, 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.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

76. Without admitting liability, Third-Party Defendant 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.

FORTY-NINTH AFFIRMATIVE DEFENSE

77. Tiffany complied with all laws, permits including the Environmental Clean Up Liability Act of 1983, now ISRA, and remediated its site in 1982 and received approval of a negative declaration for said site in 1993. Having obtained clearance for the Tiffany site, Third-Party Plaintiffs are barred from recovery therein.

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

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


DESIGNATION OF TRIAL COUNSEL

79. In Accordance with Rule 4:25-4 you are hereby notified that John H. Klock is assigned to try this case.

WHEREFORE, Third-Party Defendant Tiffany and Company 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.

Dated: November 10, 2009

Respectfully submitted,
Gibbons P.C.

A handwritten signature in black ink, appearing to read "John H. Klock", is written over a horizontal line.

John H. Klock, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
Attorney for Third-Party Defendant
Tiffany and Company

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 of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and

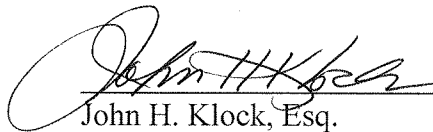
(b) Since it is the legal position of the undersigned that the potential liability, if any, of a third-party defendant for the claims set forth in the Third-Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that

(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 is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 7, 2009 posting by O'Melveny and Myers 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.

Dated: November 10, 2009

Respectfully submitted,
Gibbons P.C.

A handwritten signature in black ink, appearing to read "John H. Klock", is written over a horizontal line.

John H. Klock, Esq.
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Attorney for Third-Party Defendant
Tiffany and Company