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CIVIL OFFICE
MIDDLESEX COUNTY

By: Michael E. McMahon
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO. 2-3018-06

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	
THE ADMINISTRATOR OF THE NEW	:	<u>Civil Action</u>
JERSEY SPILL COMPENSATION	:	COMPLAINT
FUND,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
TALMADGE REALTY COMPANY;	:	
UNITED STATES LAND RESOURCES,	:	
L.P.;	:	
KEYSTONE TALMADGE, L.L.C.;	:	
191 TALMADGE ROAD REALTY	:	
HOLDINGS, L.P.;	:	
INTERLEE, INC.;	:	
CHAMPION LABORATORIES, INC.;	:	
"ABC CORPORATIONS 1-10 (Names	:	
Fictitious); and	:	
"JOHN DOES" 1-10 (Names	:	
Fictitious;	:	
	:	
Defendants.	:	

Plaintiffs New Jersey Department of Environmental Protection
("DEP"), and the Administrator of the New Jersey Spill Compensation

Fund ("Administrator") (collectively, "the Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the American Bindery site in Edison, Middlesex County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the American Bindery site. Further, the Plaintiffs seek an order compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the American Bindery site.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority

to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for any injury to the natural resources of this State. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

5. Defendant Talmadge Realty Company ("Talmadge Realty") is a general partnership organized under the laws of the State of New Jersey, with a principal place of business located at 2100 Linwood Avenue, Fort Lee, New Jersey.

6. Defendant United States Land Resources, L.P. ("U.S. Land") is a limited partnership organized and existing under the laws of the State of New Jersey, with a principal place of business located at 237 South Street, Morristown, New Jersey.

7. Defendant Keystone Talmadge, L.L.C. ("Keystone Talmadge") is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business located at 14100 East 35th Place, Aurora, Colorado.

8. Defendant 191 Talmadge Road Realty Holdings, L.P. ("191 Talmadge") is a limited partnership organized and existing under the laws of the State of New Jersey, with a principal place of business located at 237 South Street, Morristown, New Jersey.

9. Defendant Interlee, Inc. ("Interlee") is a corporation organized under the laws of the State of Delaware, with a last known principal place of business located at 191 Talmadge Road, Edison, New Jersey.

10. Defendant Champion Laboratories, Inc. ("Champion") is a corporation organized and existing under laws of the State of Delaware, with a principal place of business located at 200 South 4th Street, Albion, Illinois.

11. In or about December 1985, defendant Interlee and defendant Champion merged, with the surviving entity being defendant Champion.

12. Defendant Champion is defendant Interlee's successor-in-interest.

13. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate

successors to, predecessors of, or are otherwise related to, defendants Talmadge Realty, U.S. Land, Keystone Talmadge, 191 Talmadge, Interlee and Champion.

14. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, defendants Talmadge Realty, U.S. Land, Keystone Talmadge, 191 Talmadge, Interlee, Champion and one or more of the ABC Corporation defendants.

AFFECTED NATURAL RESOURCE

Ground Water

15. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

16. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

17. Ground water provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

18. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization,

prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

19. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

20. There are more than 6,000 sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

GENERAL ALLEGATIONS

21. The American Bindery site consists of approximately 15 acres of real property located at 191 Talmadge Road, Township of Edison, Middlesex County, New Jersey, this property being also known and designated as Block 50, Lot 10, on the Tax Map of the Township of Edison ("the American Bindery Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. G000001411.

22. The American Bindery Property is occupied by a one-story, 130,000 square foot warehouse surrounded by an asphalt paved area.

23. On April 8, 1959, Lee Filter, Inc. acquired the American Bindery Property from the Township of Edison, which it later sold to defendant Talmadge Realty on or about January 11, 1960.

24. On or about October 21, 1987, defendant Talmadge Realty sold the American Bindery Property to defendant U.S. Land, which on

or about December 11, 1996, sold the American Bindery Property to defendant 191 Talmadge.

25. On or about March 7, 2003, defendant Keystone Talmadge acquired the American Bindery Property from defendant 191 Talmadge and, as of the filing of this Complaint, is the owner of record.

26. During the time that defendants Talmadge Realty, U.S. Land, 191 Talmadge, Keystone Talmadge, one or more of the ABC Corporation defendants and/or one or more of the John Doe defendants, owned the American Bindery Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included methylene chloride, 1,1 dichloroethene, 1,1 dichloroethane, trichloroethene, tetrachloroethene, bromodichloromethane, chlorobenzene, vinyl chloride and cis-1,2 dichloroethene.

27. From 1960 through 2003 defendants Interlee, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, operated an automotive filter manufacturing facility at the American Bindery Property, the operation of which involved the storage and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were discharged there within the meaning of N.J.S.A. 58:10-23.11b., which substances included methylene chloride, 1,1 dichloroethene, 1,1 dichloroethane, trichloroethene, tetrachloroethene,

bromodichloromethane, chlorobenzene, vinyl chloride and cis-1,2 dichloroethene.

28. On or about May 6, 1987, defendant Interlee emptied the contents of an on-site septic tank and arranged for the wastes to be disposed of at an approved out-of-state facility.

29. After the tank was emptied, defendant Interlee excavated and removed the tank and, further, excavated and removed the soils immediately surrounding it.

30. During the tank removal, defendant Interlee determined that the tank was buried below the groundwater table, prompting defendant Interlee to install four monitoring wells to sample the ground water.

31. In December 1987, defendant Interlee submitted a remedial investigation report to plaintiff DEP, which report documented defendant Interlee's installation of three monitoring wells and defendant Interlee's sampling of those wells.

32. The results from defendant Interlee's sampling revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the ground water, which substances included methylene chloride, 1,1 dichloroethene, 1,1 dichloroethane, trichloroethene, tetrachloroethene, bromodichloromethane, chlorobenzene, vinyl chloride and cis-1,2 dichloroethene.

33. In 1988, plaintiff DEP directed defendant Interlee to conduct additional groundwater sampling, which defendant Interlee did by installing additional monitoring wells in 1988, and sampling the ground water at the Site on various occasions between 1988 and 1991.

34. In January 1991, defendant Interlee submitted a cleanup plan pursuant to the Environmental Cleanup Responsibility Act, now the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to 14, to plaintiff DEP, which plan plaintiff DEP conditionally approved on or about April 30, 1991.

35. Defendant Interlee's cleanup plan called for the pumping and subsequent treatment of ground water, which then would be discharged to a nearby storm sewer.

36. In April 1998, defendant Interlee submitted data to plaintiff DEP that defendant Interlee contended showed that the contamination at the American Bindery Property was caused by contamination migration from an adjacent property.

37. In December 1998, plaintiff DEP informed defendant Interlee that there was insufficient data to determine that the contamination at the Site was solely from the adjacent property.

38. In March 2002, plaintiff DEP directed defendant Interlee to install twelve additional monitoring wells to determine if the contamination from the adjacent property was contributing to the contamination at the Site.

39. In July 2002, plaintiff DEP issued defendant Interlee a Notice of Violation for failing to install the twelve additional monitoring wells plaintiff DEP directed defendant Interlee in March 2002 to install and sample.

40. As of the filing of this Complaint, defendant Interlee has failed to install and sample the twelve monitoring wells as plaintiff DEP directed it to do.

41. On February 14, 2003, defendant 191 Talmadge submitted an application for a Remediation Agreement to plaintiff DEP, which application plaintiff DEP approved on or about February 24, 2003.

42. On January 22, 2004, plaintiff DEP informed defendant 191 Talmadge that remediation at the Site was inactive and could be undertaken by defendant Interlee, defendant 191 Talmadge, or jointly by both parties.

43. In October 2005, a Remedial Action Report was submitted on behalf of defendant Interlee, which report did not satisfactorily address the July 2002 Notice of Violation issued by plaintiff DEP.

44. Although defendants Interlee and 191 Talmadge have initiated remediation of the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

45. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 44 above as though fully set forth in its entirety herein.

46. Each defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

47. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the American Bindery Property.

48. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, or may approve, other appropriations for the Site.

49. The Plaintiffs have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the American Bindery Property.

50. The costs and damages the Plaintiffs have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

51. Defendant Interlee, defendant Champion, one or more of the ABC Corporation defendants, and/or one or more of the John Doe

defendants, are, or are the successors-in-interest to, the dischargers of hazardous substances at the American Bindery Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the American Bindery Property. N.J.S.A. 58:10-23.11g.c.(1).

52. Defendants Talmadge Realty, U.S. Land, Keystone Talmadge, 191 Talmadge, one or more of the ABC Corporation defendants and/or one or more of the John Doe defendants, as the owners of the American Bindery Property at the time hazardous substances were discharged there, are persons in any way responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the American Bindery Property. N.J.S.A. 58:10-23.11g.c.(1).

53. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior

Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

54. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the American Bindery Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost

value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the American Bindery Property;

- c. Enter judgment against defendants 191 Talmadge and Champion, compelling them to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further cleanup of hazardous substances at the American Bindery Property;
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

55. Plaintiffs repeat each allegation of paragraph nos. 1 through 54 above as though fully set forth in its entirety herein.

56. Ground water is a natural resource of the State held in trust by the State.

57. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public.

58. The contamination of ground water at the Site constitutes a physical invasion of public property and an unreasonable and

substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

59. As long as ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

60. Until the ground water is restored to its pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the American Bindery Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by

the discharge of hazardous substances at the American Bindery Property;

- c. Enter judgment against defendants 191 Talmadge and Champion, compelling them to abate the nuisance by performing any further cleanup of hazardous substances discharged at the American Bindery Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the American Bindery Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the American Bindery Property;
- e. Award the Plaintiffs their costs and fees in this action;
and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

61. Plaintiffs repeat each allegation of paragraph nos. 1 through 60 above as though fully set forth in its entirety herein.

62. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

63. The Defendants are liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the American Bindery Property by the Defendants.

64. As long as ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

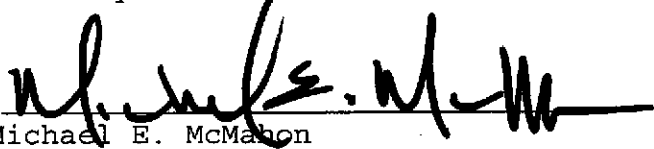
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the American Bindery Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by

the discharge of hazardous substances at the American Bindery Property;

- c. Enter judgment against defendants 191 Talmadge and Champion, compelling them to cease the trespass by performing any further cleanup of hazardous substances discharged at the American Bindery Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the American Bindery Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the American Bindery Property;
- e. Award the Plaintiffs their costs and fees in this action;
and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Michael E. McMahon
Deputy Attorney General

Dated: April 6, 2006

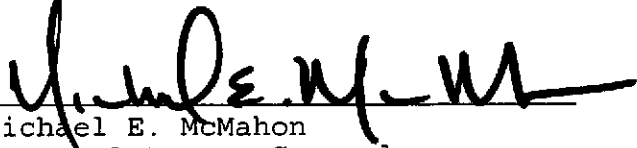
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Michael E. McMahon, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are the subject of an action in the Federal District Court of New Jersey captioned Champion Laboratories, Inc. v. Metex Corp. et al. 02-5284 (WHW). There is no non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Michael E. McMahon
Deputy Attorney General

Dated: April 6, 2006