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SUPERIOR COURT BERGEN COUNTY  
FILED

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BERGEN COUNTY  
DOCKET NO. BER L-2484-06

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

Plaintiffs,

v.

700 GOTHAM PARKWAY ASSOCIATES,  
a New York general  
partnership; 700 GOTHAM  
L.L.C., a New Jersey limited  
liability company, as  
successor in interest to 700  
GOTHAM PARKWAY ASSOCIATES;  
COOK & DUNN PAINT CORPORATION,  
a New Jersey corporation; "ABC  
OWNER/OPERATOR CORPORATIONS 1-  
10 (Names Fictitious); and XYZ  
OWNER/OPERATOR PARTNERSHIPS 1-  
10 (Names Fictitious),

Defendants.

Civil Action

COMPLAINT

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 700 Gotham Parkway Associates, 700 Gotham L.L.C., and Cook & Dunn Paint Corporation (collectively, the "Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 (the "Spill Act"), and the common law, for reimbursement of the cleanup and removal costs they have incurred, and will incur, as a result of the discharge of hazardous substances at the located at 700 Gotham Parkway, Carlstadt, Bergen County (the "PLC Property"). 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 PLC Property, and to compel 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 PLC Property.

### THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve 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 damages 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 that 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. Upon information and belief, defendant 700 Gotham Parkway Associates ("Parkway Associates") is a general partnership organized under the laws of the State of New York, with an address at c/o Jack S. Koffman, Esq. 150 E. 52nd Street, 17th Flr., New York, New York 10022.

6. Defendant 700 Gotham L.L.C. ("700 Gotham") is a New Jersey limited liability company, and a successor in interest to Parkway Associates, with an address in the New Jersey located at 153 Fort Lee Road, Teaneck, New Jersey 07666.

7. During the period of time relevant to the Plaintiffs' cause of action, defendant Cook & Dunn Paint Corp. ("Cook & Dunn") was a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 49 Rutherford Street, Newark, New Jersey.

8. Defendants "ABC Owner/Operator Corporations" 1-10, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, and that either owned or controlled the PLC Property, or the paint manufacturing operations located there, at any time when hazardous substances were discharged there.

9. Defendants "XYZ Owner/Operator Partnerships" 1-10, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, and that either owned or controlled the PLC Property, or the paint manufacturing operations located there, at any time when hazardous substances were discharged there.

### GENERAL ALLEGATIONS

16. The real property where the discharges of hazardous substances occurred consists of approximately 4.73 acres of real property located at 700 Gotham Parkway, Carlstadt, Bergen County, New Jersey, this property being also known and designated as Block 123, Lot 29, 30, 31 and 32, on the Tax Map of Carlstadt, and all other areas where any hazardous substance discharged there has become located (collectively, the "Site"), and which plaintiff DEP has designated as Site Remediation Program Interest No. 021507.

17. From 1961 through some time in 1984, Pur-All Paints, Inc., a division of PLC Enterprises, Inc., owned the PLC Property as successor to its predecessor in title, Chalbro, Inc.

18. From 1984 through 1997, defendant Parkway Associates owned the PLC Property, during which time "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 include xylene.

19. From 1997 through the present, defendant 700 Gotham has owned the PLC Property, where "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" within the meaning of N.J.S.A. 58:10-23.11b., and which substances include xylene.

20. From 1961 through some time in 1984, Pur-All Paints, Inc., a division of PLC Enterprises, Inc., operated a paint manufacturing facility at the PLC Property.

21. From on or about 1984 through on or about 1996, defendant Cook & Dunn operated a paint manufacturing facility at the PLC Property, the operation of which involved the handling and storage 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., and which substances include xylene.

22. On or about April 8, 1987, Parkway Associates entered to an agreement to sell the PLC Property, an event which triggered compliance with the former Environmental Cleanup and Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14, including investigation and reporting of the environmental conditions at the PLC Property.

23. The soil and ground water sampling conducted as a result of compliance with ECRA, revealed the presence of actionable levels of petroleum hydrocarbons, volatile organic compounds ("VOCs") and polynuclear aromatic hydrocarbons, including xylene, in the soil of and in the ground water beneath the Site.

24. On November 9, 1987, DEP was notified that the source of the VOC contaminant in the ground water appeared to be leakage from the tank farm dike and/or pump-out of potentially volatile bearing storm water. The notification reported that the tanks contained mineral spirits, VM&P naptha, toluene, xylene, butyl alcohol, asphalt and alkyd paint resins.

25. On July 13, 1988, xylene was discharged at the Site as a result of a tank overflow during a product off-loading by a bulk carrier. It was estimated that between 100 to 200 gallons of xylene were released during this event.

26. In 1988, several of the underground pipes connecting the tank farm with production areas were found to have been leaking for an indeterminate period of time. The leaking lines contained mineral spirits, hi-flashpoint solvents, including xylene, and mineral solvents. It was estimated that an indeterminate amount of xylene was released and entered the aquifer as a result of this underground leakage.

27. On January 27, 1989, a document with the title "Cleanup Plan for Pur-All Div. - PLC Enterprises, Inc." was submitted to DEP ("Cleanup Plan") in connection with the PLC Property. The Cleanup Plan identified several areas of concern as potential sources of contaminants, including: a 5,000 gallon underground fuel oil tank; two abandoned septic "leach" tanks; five underground spill retention tanks; the "1988 dumpster location"; a "diked tank farm" containing above ground tanks connected through underground pipes; and the drain valves on the back wall of the dike, located on the property line.

28. The Cleanup Plan was implemented between 1991 and 1993. As a result, soils in and around the areas of concern were excavated, soil samples were taken and analyzed, and ground water

monitoring wells were installed and periodically sampled and analyzed. The Cleanup Plan documented findings of contamination from xylene, benzene, toluene, ethylbenzene, petroleum hydrocarbons, and heavy metals, including chromium, lead, zinc, and mercury.

29. In March 1993, Cook & Dunn reported a fuel oil spill to DEP, where #4 fuel oil was found percolating up from the ground in and around the area where the 5,000 gallon underground fuel oil tank was located.

30. In response to the soil and ground water investigations at the Site, Remedial Action Workplans (RAWPs), as revised, and periodic Remedial Action Reports (collectively, "Remediation Reports") were submitted to DEP. The remedy selected to cleanup the environmental media affected by the discharges of hazardous substances at and from the PLC Property included a ground water recovery and treatment ("pump and treat") system, a soil vapor extraction system, and, as of 2004, a bioremediation system.

31. The ground water pump and treat system was activated at the PLC Property in April 1997. It was reported to DEP that as of February 28, 2005 approximately 7,131 gallons of xylene had been recovered and 811,250 gallons of water had been treated.

32. Although remedial action for the Site was initiated and is still ongoing, the groundwater remains contaminated and this



contamination has had, and continues to have, a deleterious impact upon the natural resources of this State, including ground water.

FIRST COUNT

Spill Act

33. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 32 above as though fully set forth in its entirety herein.

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

35. 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 PLC Property.

36. 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.

37. Defendant Parkway Associates, as the owner of the PLC Property at the time hazardous substances were discharged there, is a person otherwise responsible for the discharged hazardous substances, and is 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 as a result of the discharge of hazardous substances.

38. Defendant Cook & Dunn, as the operator of the paint manufacturing facility at the PLC Property at the time hazardous substances were discharged there, is a person otherwise responsible for the discharged hazardous substances, and is 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 as a result of the discharge of hazardous substances at the PLC Property. N.J.S.A. 58:10-23.11g.c.(1).

39. 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).

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 PLC 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 PLC Property;
- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, 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 PLC 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 as a result of the discharge of hazardous substances at the PLC 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

40. Plaintiffs repeat each allegation of Paragraphs 1 through 39 above as though fully set forth in its entirety herein.

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

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

43. The groundwater contamination 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.

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

45. Until the ground water is restored to its pre-injury quality, the Defendants are liable for the creation, and continued

plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the PLC 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.

### THIRD COUNT

#### Trespass

46. Plaintiffs repeat each allegation of Paragraphs 1 through 45 above as though fully set forth in its entirety herein.

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

48. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the PLC Property.

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

### PRAYER FOR RELIEF

**WHEREFORE**, plaintiffs DEP and Administrator pray that this Court: