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MERCER COUNTY
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
DOCKET NO. *L2006-05*

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

Plaintiffs,

v.

LOCKHEED MARTIN CORPORATION,

Defendant.

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 defendant, say:

STATEMENT OF THE CASE

1. 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 and 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 two Lockheed Martin sites. One is located in Watchung, Somerset County, New Jersey, and one is located in East Windsor, Mercer County, New Jersey. Plaintiffs also seek to compel the Defendant to perform, under plaintiff DEP's oversight, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharge of hazardous substances at or from the Lockheed Martin Watchung and East Windsor sites.

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, with the State being the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, plaintiff DEP is vested with the authority to protect this public trust. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("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 Lockheed Martin Corporation ("Lockheed Martin") is a corporation organized under the laws of the State of Maryland, with its main place of business located at 6801 Rockledge Drive, Bethesda, Maryland 20817.

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

AFFECTED NATURAL RESOURCE

Groundwater

7. Groundwater 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.

8. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

9. Groundwater also provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

10. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

11. There are more than 6,000 contaminated sites in New Jersey that have confirmed groundwater contamination with hazardous substances.

Surface Water

12. A supply of approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

13. Surface water in New Jersey is also used for other commercial and industrial uses, such as cooling water and

electrical generation, boating, fishing, swimming, and transportation of goods and services.

14. The tourist and recreation industries, which are vital to the economy of this State, are dependent on clean waters and beaches.

GENERAL ALLEGATIONS

Lockheed Martin Watchung Property

15. The Lockheed Martin Watchung property consists of approximately 54 acres of real property located at 1501 U.S. Highway #22, Watchung, Somerset County, this property being also known and designated as Block 5703 Lots 8, 9 and 10 and Block 6.02 Lot 4 on the Tax Map of Watchung ("the Lockheed Martin Watchung Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Watchung Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 004334.

16. From 1953 through the present, Lockheed Martin has owned the Lockheed Martin Watchung Property.

17. From approximately 1953 through 1989, Lockheed Martin manufactured, tested and assembled electronic components at the Lockheed Martin Watchung Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Lockheed Martin Watchung Property within the meaning of N.J.S.A. 58:10-23.11b.

18. The 1989 cessation of operations required a site inspection pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

19. Sampling results from the Lockheed Martin Watchung Property inspection revealed the presence of various hazardous substances in the soils and groundwater at and underlying the Site, including trichloroethylene.

20. Surface water discharge, primarily of trichloroethylene, is also present in Crab Brook, immediately adjacent to the Site.

21. Pursuant to an Administrative Consent Order dated November 15, 1990, Defendant Lockheed Martin has begun to address, under plaintiff DEP's oversight, the on-site soils, sediments and surface water discharge of hazardous substances. A pump and treat remedy in conjunction with natural attenuation is currently in place for the groundwater at the site. Extensive soil surface and groundwater contamination continues.

Lockheed Martin East Windsor Property

22. The Lockheed Martin East Windsor property consists of approximately 127 acres of real property on two parcels of land located at 50 Millstone Road and 493 Edinburg Road, East Windsor, Mercer County, this property being also known and designated as Block 2, Lots 1 and 2; and Block 5, Lot 3 on the Tax Map of East Windsor ("the Lockheed Martin East Windsor Property"), and all other areas where any hazardous substance discharged there has

become located (collectively, "the East Windsor Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 158269.

23. From 1957 until its 1987 merger with General Electric, RCA Astro Electronics owned the property. In 1993 Martin Marietta gained ownership of the property through its acquisition of GE Astro Electronics. The 1995 merger of Lockheed Corporation and Martin Marietta resulted in the retention of the property by the newly formed Lockheed Martin. Lockheed Martin conveyed the property to Windsor Limited Partnership and BlackLight Power in 1998.

24. From approximately 1957 through 1998, the East Windsor property was used by Lockheed Martin, and its predecessors, for the research, development, manufacturing, and testing of satellites and related projects, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Lockheed Martin East Windsor Property within the meaning of N.J.S.A. 58:10-23.11b.

25. The 1986 sale of RCA Astro Electronics to General Electric required a site inspection pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

26. Sampling results from the East Windsor Property inspection and subsequent inspections revealed the presence of various hazardous substances in the soils and groundwater at and

underlying the Site, including volatile organic compounds, primarily trichloroethylene.

27. Defendant Lockheed Martin is currently addressing the soil and groundwater contamination at the East Windsor Site, under plaintiff DEP's oversight, pursuant to an Administrative Consent Order dated June 9, 1986. A system for the injection of constituents intended to neutralize the hazardous nature of the contaminants in conjunction with natural attenuation is currently in place for groundwater at the Site. Groundwater contamination continues.

FIRST COUNT

Spill Act

28. Plaintiffs repeat each allegation of Paragraphs 1 through 27 above as though fully set forth in its entirety herein.

29. Plaintiffs have incurred, and will continue to incur, cleanup and removal costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharges at the Sites.

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

31. The Defendant, as the owner of the Lockheed Martin Watchung and East Windsor Properties at the time hazardous substances were discharged there, is responsible for the discharged

hazardous substances, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, 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 discharges of hazardous substances at the Lockheed Martin Watchung and East Windsor Properties. N.J.S.A. 58:10-23.11g.c.(1).

32. The Defendant, as the discharger of hazardous substances at and from the Lockheed Martin Watchung and East Windsor Properties, is liable, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, 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 discharges of hazardous substances at the Lockheed Martin Watchung and East Windsor Properties. N.J.S.A. 58:10-23.11g.c.(1).

33. 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).

34. 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 Defendant to reimburse the Plaintiffs, 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 by the discharges of hazardous substances at the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor Property;

- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Lockheed Martin Watchung and Lockheed Martin East Windsor Properties, by performing, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and compensatory restoration of, any natural resource injured by the discharge of hazardous substances at the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor 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

35. Plaintiffs repeat each allegation of Paragraphs 1 through 34 above as though fully set forth in its entirety herein.

36. All natural resources within the State are held in trust by the State.

37. The use, enjoyment and existence of uncontaminated natural resources is a right common to the general public.

38. The contamination of natural resources at both Sites 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 those natural resources.

39. As long as any natural resource remains contaminated due to the Defendant's conduct, the public nuisance continues.

40. Until the natural resources are restored to their pre-injury quality, quantity, function, and value, the Defendant is liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to uncontaminated natural resources.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant 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 discharges of hazardous substances at the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor Property, with applicable interest;

- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damage to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Lockheed Martin Watchung and Lockheed Martin East Windsor Properties, by performing, under plaintiff DEP's oversight, or by funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor 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

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

42. All natural resources within the State are held in trust by the State.

43. The Defendant is liable for trespass, and continued trespass, since hazardous substances were first discharged at and from the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor Property.

44. As long as any natural resource remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant 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 discharges of hazardous substances at the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor Property, with applicable interest;

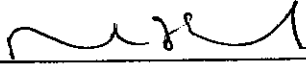
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Lockheed Martin Watchung Property and the Lockheed Martin East Windsor Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Lockheed Martin Watchung and Lockheed Martin East Windsor Properties, by performing, under plaintiff DEP's oversight, or by 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 Lockheed Martin Watchung Property and the Lockheed Martin East Windsor 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.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

Dated: July 25, 2005

By: _____


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Dated: July __, 2005

By: _____

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DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Allan Kanner, Special Counsel to the Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

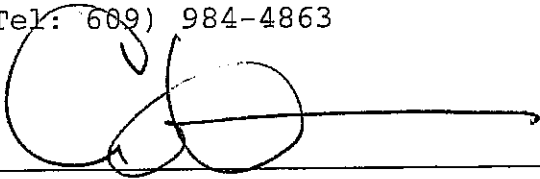
e. Award the Plaintiffs such other relief as this Court deems appropriate.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

Dated: July __, 2005

By: _____
Richard F. Engel
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Dated: July 26, 2005

By:  _____
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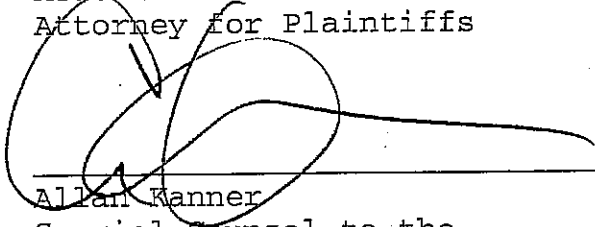
CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any 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 or new issue, including claims to recover other cleanup and removal costs, 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).

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

Dated: July 26, 2005

By: _____


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