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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAPE MAY COUNTY
DOCKET NO.

NEW JERSEY DEPARTMENT OF :
ENVIRONMENTAL PROTECTION and : Civil Action
THE ADMINISTRATOR OF THE NEW :
JERSEY SPILL COMPENSATION : COMPLAINT
FUND, :
 :
Plaintiffs, :
 :
v. :
 :
ALCAN GLOBAL PHARMACEUTICAL :
PACKAGING, INC., :
 :
Defendant. :

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 :
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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 Alcan Global Pharmaceutical Packaging, Inc. ("the Defendant"), 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 costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the Williams site in Middle Township, Cape May 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 Williams site. Further, the Plaintiffs seek an order compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Williams site, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

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 Alcan Global Pharmaceutical Packaging, Inc. is a corporation, organized and existing under the laws of the State of New Jersey, with a principal place of business located at 1101 Wheaton Avenue, Millville, New Jersey.

6. On February 14, 1946, the Wheaton Glass Company, Inc. was incorporated.

7. On September 18, 1969, the Wheaton Plasti-Cote Corporation merged into the Wheaton Glass Company, Inc. The surviving corporation was the Wheaton Glass Company, Inc.

8. On June 26, 1970, Wheaton Plastics Company, Inc. merged into the Wheaton Glass Company, Inc. The surviving corporation was the Wheaton Glass Company, Inc. On June 26, 1970, the Wheaton Glass Company, Inc. changed its name to Wheaton Industries, Inc.

9. On December 17, 1991, Wheaton Industries, Inc. changed its name to Wheaton Packaging, Inc.

10. On December 20, 1991, a new corporation, Wheaton Industries, Inc., was incorporated.

11. On January 13, 1992, Wheaton Packaging, Inc. changed its name to Wheaton, Inc.

12. On June 16, 1995, Wheaton, Inc. and Wheaton Industries, Inc. merged. The name of the surviving corporation was Wheaton, Inc.

13. On June 18, 1996, Wheaton, Inc. changed its name to Lawson Mardon Wheaton, Inc.

14. On January 27, 1999, Lawson Mardon Wheaton, Inc. changed its name to Wheaton USA, Inc.

15. On April 29, 2003, Wheaton USA, Inc. changed its name to Alcan Packaging Pharmaceutical and Personal Care, Inc.

16. On August 10, 2004, Alcan Packaging Pharmaceutical and Personal Care, Inc. changed its name to defendant Alcan Global Pharmaceutical Packaging, Inc.

AFFECTED NATURAL RESOURCE

17. The "natural resources" of this State are all land, fish, shellfish, wildlife, biota, air, water and other such resources owned, managed, held in trust or otherwise controlled by the State. N.J.S.A. 58:10-23.11b.

Ground Water

18. 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.

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

20. 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.

21. 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.

22. 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.

23. There are thousands of sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

GENERAL ALLEGATIONS

24. The Williams site consists of approximately 5.6 acres of real property located at 61 Siegtown Road, Middle Township, Cape May County, New Jersey, this property being also known and designated as Block 99.02, Lot 3, on the Tax Map of Middle Township ("the Williams 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. G000004551.

25. From 1978 through 1979, the Defendant's predecessor, Wheaton Industries, Inc., generated "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" at the Williams Property within the meaning of N.J.S.A. 58:10-23.11b., which substances were methyl isobutyl ketone, chloroform, tetrachloroethylene, benzene, o-dichlorobenzene, toluene and o-xylene.

26. In August 1979, approximately 150 drums of liquid chemical wastes and sludge were discharged on the Williams Property.

27. In June 1980, plaintiff DEP, in response to the discharge of 150 drums of liquid chemical wastes, performed an emergency

cleanup of the spill and removed approximately 1,200 cubic yards of sludge and soil and empty drums from the Williams Property.

28. On various occasions from 1979 through 1981, personnel from plaintiff DEP inspected the Site and observed the 1979 liquid chemical spill, the destruction of twenty pine trees, the lack of vegetation at the Site, heavy organic and pesticide odors and contaminated soil.

29. On September 1, 1983, the United States Environmental Protection Agency ("EPA") placed the Site on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B. The NPL, which was established pursuant to Section 105(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C.A. § 9605(a), is a list EPA promulgates of hazardous waste sites that pose the greatest threat to the human health and safety, and the environment.

30. From October 1985, through July 1987, plaintiff DEP performed a remedial investigation and feasibility study ("RI/FS") of the Site pursuant to Section 104 of CERCLA, 42 U.S.C.A. § 9604, during which plaintiff DEP investigated the nature and extent of the contamination at the Site and evaluated various remediation alternatives.

31. Sampling results from the remedial investigation and feasibility study revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup

criteria in the ground water and soils at the Site, which include trichloroethane, total xylenes, toluene, Bis (2-chloroethyl) ether, 2-Butanone, naphthalene, phenols, tetrachloroethene, acetone, iron, manganese, sodium, cyanide and lead.

32. On September 29, 1987, EPA, with plaintiff DEP's concurrence, issued a Record of Decision for the Site ("1987 ROD") in which EPA documented and explained the preferred remedy to address the contaminated soil and groundwater at the Site.

33. The remedy EPA selected in the 1987 ROD primarily provides for extraction of the contaminated groundwater from the underlying aquifer, treatment of the extracted groundwater and the discharge of the treated groundwater to the underlying aquifer. The soil remedy in the 1987 ROD provides for the excavation of the contaminated soils, removal of the excavated soils to an approved off-site disposal facility for incineration, regrading the excavated area with clean fill and revegetation.

34. During field investigations to design and construct the groundwater remedy of the 1987 ROD it was determined that the groundwater remedy had to be modified. On February 11, 1993, EPA issued an Explanation of Significant Differences ("ESD") pursuant to Section 117(c) of CERCLA, 42 U.S.C.A. § 9617 (c), and Section 300.435(c)(2)(i) of the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C.A. § 9605, and codified at 40 C.F.R. Part 300.

The ESD incorporated biological treatment of the contaminated groundwater rather than air stripping.

FIRST COUNT

Spill Act

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

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

37. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that is discharged, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.(c).

38. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge is a violation of the Spill Act, for which any person who is the discharger of, or is in any way responsible for, any hazardous substance that is discharged is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

39. 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 Williams Property.

40. 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.

41. Defendant, as the generator of hazardous substances that were discharged at the Williams Property, is a person in any way 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 Williams Property. N.J.S.A. 58:10-23.11g.c.(1).

42. Due to mergers and name changes from 1946 to 2004, the Defendant is liable for the discharges of hazardous substances, generated by Wheaton Industries, Inc., at the Williams Property.

43. 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).

44. 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 as a result of the discharge of hazardous substances at the Williams 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, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Williams Property;

- c. Enter judgment against the Defendant, without regard to fault, compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Williams Property, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource.
- 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

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

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

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

48. 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.

49. As long as the ground water remains contaminated due to the Defendant's conduct, the public nuisance continues.

50. Until the ground water is restored to its pre-injury quality, the Defendant is 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 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 as a result of the discharge of hazardous substances at the Williams 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, that the Plaintiffs will

incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Williams Property;

- c. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Williams Property, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource.
- 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

51. The Plaintiffs repeat each allegation of paragraph nos. 1 through 50 above as though fully set forth in its entirety herein.

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

53. The Defendant is liable for trespass, and continued trespass, since hazardous substances were discharged at the Williams Property.

54. As long as the ground water 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 as a result of the discharge of hazardous substances at the Williams 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, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Williams Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, or

to fund plaintiff DEP's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Williams Property, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource.

- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

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Attorney for Plaintiffs

By: *Louis G. Karagias*
Louis G. Karagias
Deputy Attorney General

Dated: *June 25, 2007*

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Louis G. Karagias, 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 not the subject of any other pending or contemplated 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 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).

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Attorney for Plaintiffs

By: Louis G. Karagias
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Dated: June 25, 2007