

RIKER DANZIG SCHERER HYLAND & PERRETTI LLP  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07962-1981  
(973) 538-0800

Attorneys for Third-Party Defendant,  
Thomas & Betts Corporation

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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

AMERICAN CYANAMID,  
BAYER CORPORATION,  
BAYONNE INDUSTRIES, INC.,  
BP MARINE AMERICAS, INC.,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, ESSEX COUNTY  
DOCKET NO. L-9869-05 (PASR)

CIVIL ACTION

**THOMAS & BETTS CORPORATION'S  
ANSWER TO THIRD-PARTY  
COMPLAINT "D"**

CHEMICAL WASTE MANAGEMENT, INC.,  
DOW CHEMICAL COMPANY,  
DURAPORT REALTY ONE LLC,  
DURAPORT REALTY TWO LLC,  
EPEC POLYMERS, INC.,  
GAESS ENVIRONMENTAL SERVICES  
INC.,  
GATX TERMINALS CORPORATION,  
GOODRICH CORPORATION,  
HESS CORPORATION,  
IMTT-BAYONNE,  
KINDER MORGAN ENERGY PARTNERS,  
L.P.,  
McKESSON CORPORATION,  
McKESSON ENVIROSYSTEMS CO.,  
SAFETY-KLEEN CORPORATION,  
SHULTON, INCORPORATED, USA,  
SUN PIPELINE CO.,  
SUN REFINING & MARKETING CO.,  
SUN OIL CO.,  
SUPERIOR MPM LLC,  
THOMAS & BETTS CORP.,  
WASTE MANAGEMENT, INC.,  
WYETH,

Third-Party Defendants.

**THOMAS & BETTS CORPORATION'S ANSWER TO THIRD-PARTY  
COMPLAINT "D"**

Third-Party Defendant Thomas & Betts Corporation ("Thomas & Betts"), by and through its undersigned counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answers the Third-Party Complaint "D" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

## GENERALLY

1. Thomas & Betts denies each and every allegation contained in Third-Party Complaint "D" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "D".

## PROCEDURAL BACKGROUND (Paragraphs 1 through 7)

1-7. Thomas & Betts responds that no answer is required pursuant to CMO V.

## FIRST COUNT

### New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a) (Paragraphs 8 through 13)

8. Thomas & Betts incorporates by reference as if fully set forth herein its responses in Paragraphs 1-7 above.

9. Paragraph 9 states conclusions of law to which no response is required. Thomas & Betts is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 concerning the Third-Party Defendants. Finally, to the extent Paragraph 9 alleges facts against Thomas & Betts, such factual allegations are denied.

10. Paragraph 10 states conclusions of law to which no response is required. To the extent Paragraph 10 alleges facts against Thomas & Betts, such factual allegations are denied.

11. Paragraph 11 states conclusions of law to which no response is required. Thomas & Betts is without knowledge or information sufficient to form a

belief as to the truth of the allegations set forth in Paragraph 11 concerning the Third-Party Defendants. Finally, to the extent Paragraph 11 alleges facts against Thomas & Betts, such factual allegations are denied.

12. Paragraph 12 states conclusions of law to which no response is required. Thomas & Betts is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 concerning the Third-Party Defendants. Finally, to the extent Paragraph 12 alleges facts against Thomas & Betts, such factual allegations are denied.

13. Paragraph 13 states conclusions of law to which no response is required. Thomas & Betts is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 concerning the Third-Party Defendants. Finally, to the extent Paragraph 13 alleges facts against Thomas & Betts, such factual allegations are denied.

**FACTUAL ALLEGATIONS**  
**(Paragraphs 14 through 89)**

14-33. To the extent the allegations in Paragraphs 14 through 33 relate to other parties, no answer is required pursuant to CMO V. To the extent these allegations allege facts against Thomas & Betts, such factual allegations are denied.

**Thomas & Betts Corporation Site**

34. Thomas & Betts admits that it is a corporation with its principal place of business in Memphis, Tennessee. Thomas & Betts also admits that it donated the property located at 26 Butler Street, Elizabeth, New Jersey to the First Occupational Center of New Jersey, Inc. in 1995 and that as a result of that transfer Thomas & Betts has been performing an investigation and remediation of the property pursuant to the

New Jersey Industrial Site Recovery Act. Thomas & Betts is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 34 of Third-Party Complaint D that relate to parties other than Thomas & Betts and denies all remaining allegations asserted in Paragraph 34 of Third-Party Complaint D relating to Thomas & Betts.

35. Thomas & Betts is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 35 of Third-Party Complaint D that relate to parties other than Thomas & Betts and denies all remaining allegations asserted in Paragraph 35 of Third-Party Complaint D relating to Thomas & Betts.

36. Paragraph 36 states conclusions of law to which no response is required. To the extent Paragraph 36 alleges facts against Thomas & Betts, such factual allegations are denied.

37-89. To the extent the allegations in Paragraphs 37 through 89 relate to other parties, no answer is required pursuant to CMO V. To the extent these allegations allege facts against Thomas & Betts, such factual allegations are denied.

## **SECOND COUNT**

### **Statutory Contribution**

90. Thomas & Betts incorporates by reference as if full set forth herein its responses in Paragraphs 1-89 above.

91. Paragraph 91 states conclusions of law to which no response is required. Thomas & Betts is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 91 concerning the Third-

Party Defendants. Finally, to the extent Paragraph 91 alleges facts against Thomas & Betts, such factual allegations are denied.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

The Third-Party Complaint is barred, in whole or in part, because it fails to state a cause of action upon which relief can be granted against Thomas & Betts.

### **Second Affirmative Defense**

Thomas & Betts is not a “discharger” nor a person “in any way responsible” for a discharge under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (the “Spill Act”).

### **Third Affirmative Defense**

The claims of Third-Party Plaintiffs are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (“WPCA”).

### **Fourth Affirmative Defense**

Third-Party Plaintiffs do not have a viable Spill Act claim against Thomas & Betts because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act nor have they incurred cleanup and removal costs that have been approved by the New Jersey Department of Environmental Protection.

#### **Fifth Affirmative Defense**

Third-Party Plaintiffs' claims against Thomas & Betts are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrine of laches.

#### **Sixth Affirmative Defense**

Third-Party Plaintiffs' claims are barred, in whole or in part, by the entire controversy doctrine.

#### **Seventh Affirmative Defense**

Upon information and belief, Third-Party Plaintiffs are mere corporate shells who are periodically infused with cash or equivalent contributions by other corporate entities which money Third-Party Plaintiffs purport to use to address the environmental contamination at issue in this litigation. Consequently, the claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

#### **Eighth Affirmative Defense**

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

**Ninth Affirmative Defense**

Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Thomas & Betts.

**Tenth Affirmative Defense**

The claims brought by Third-Party Plaintiffs reflect damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

**Eleventh Affirmative Defense**

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.

**Twelfth Affirmative Defense**

At all relevant times, Thomas & Betts complied with all applicable environmental laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

**Thirteenth Affirmative Defense**

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.



**Fourteenth Affirmative Defense**

Third-Party Plaintiffs' claims are barred, in whole or in part, by the unclean hands doctrine.

**Fifteenth Affirmative Defense**

Thomas & Betts cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based upon actions or inactions of Thomas & Betts that arise out of conduct lawfully undertaken in compliance with permits and other approvals issued by relevant government agencies, including the State of New Jersey and/or the United States and/or in compliance with applicable laws, rules, regulations, orders, ordinances, directives and common law, and other requirements of foreign, federal, state, and local government entities.

**Sixteenth Affirmative Defense**

The Plaintiffs have released Thomas & Betts for all or a portion of the damages sought in its Amended Complaint. Consequently, Third-Party Plaintiffs are barred from pursuing claims that are derivative to the released claims, including the claims asserted in the Third-Party Complaint.

**Seventeenth Affirmative Defense**

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.

**Eighteenth Affirmative Defense**

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

**Nineteenth Affirmative Defense**

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

**Twentieth Affirmative Defense**

Third-Party Plaintiffs' claims are barred, in whole or in part, by Third Party Plaintiffs' failure to comply with 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-First Affirmative Defense**

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-Second Affirmative Defense**

Third-Party Plaintiffs have failed to join necessary and indispensable parties need for a just adjudication of the claims asserted in this action, in whose absence complete relief cannot be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules.

### **Twenty-Third Affirmative Defense**

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 and will not pay more than their fair or equitable share of the liability.

### **Twenty-Fourth Affirmative Defense**

Thomas & Betts 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 law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Thomas & Betts exercised no control and for whose conduct Thomas & Betts was not responsible including, without limitation, unpermitted, storm event and other discharges from publicly owned treatment works or sewer systems.

### **Twenty-Fifth Affirmative Defense**

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 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 Thomas & Betts, 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-Sixth Affirmative Defense**

Although Thomas & Betts denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Thomas &

Betts 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.

**Twenty-Seventh Affirmative Defense**

The amount of damages awarded to Third-Party Defendants, if any, should be reduced by any amounts recovered from any other source. See N.J.S.A. 2A:15-97

**Twenty-Eighth Affirmative Defense**

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Thomas & Betts alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, and/or contribution protection in a settlement agreement with the State of New Jersey.

**Twenty-Ninth Affirmative Defense**

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

**Thirtieth Affirmative Defense**

The damages or other relief that Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

**Thirty-First Affirmative Defense**

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

### **Thirty-Second Affirmative Defense**

Thomas & Betts' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to other parties.

### **Thirty-Third Affirmative Defense**

Third-Party Plaintiffs cannot assert contribution claims against Thomas & Betts because the discharges for which the Plaintiffs are seeking relief are different from the discharges alleged to have been caused by Thomas & Betts' in the Third-Party Complaint.

### **Thirty-Fourth Affirmative Defense**

Third-Party Plaintiff cannot seek contribution under the Joint Tortfeasors Contribution Law because Thomas & Betts is not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and do not share a common liability to the State of New Jersey.

### **Thirty-Fifth Affirmative Defense**

Third-Party Plaintiffs' claims are barred to the extent they seek to hold Thomas & Betts liable, in contribution, for any claims for which it would be a violation of public policy to hold Thomas & Betts liable, including but not limited to punitive damages and penalties.

### **Thirty-Sixth Affirmative Defense**

Third-Party Plaintiffs' claims are barred, in whole or in part, because Thomas & Betts has resolved its liability to Plaintiffs for any impairment or damage to natural resources as a result of discharges alleged in the Third-Party Complaint.

**Thirty-Seventh Affirmative Defense**

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with Thomas & Betts 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 Thomas & Betts, thereby exposing Thomas & Betts to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

**Thirty-Eighth Affirmative Defense**

To the extent Thomas & Betts 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 Thomas & Betts, 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.

**Thirty-Ninth Affirmative Defense**

Without admitting liability, Thomas & Betts alleges that if it is found to be responsible for discharges or activities alleged in the Third-Party Complaint, such discharges or activities were *de minimis* and not the cause of any damages sought by Plaintiffs.

**Fortieth Affirmative Defense**

Thomas & Betts 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 Thomas & Betts.

**Forty-First Affirmative Defense**

Thomas & Betts reserves the right to assert such other affirmative defenses as may become known to it.

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

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

**WHEREFORE**, Third-Party Defendant Thomas & Betts Corporation respectfully requests that the Court enter an Order dismissing the Third-Party Complaint "D" with prejudice, and awarding costs, attorneys fees and any other relief the Court deems just and proper.

Respectfully submitted,

RIKER, DANZIG, SCHERER  
HYLAND & PERRETTI LLP  
Attorneys for Third-Party Defendant  
Thomas & Betts Corporation

By: 

Samuel P. Moulthrop  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, New Jersey 07962  
(973) 538-0800

Dated: November 16, 2009

**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 the undersigned states that there are other parties that may have discharged hazardous substances into the Newark Bay Complex contributing to the harm alleged by the Third-Party Plaintiffs. O'Melveny and Myers has filed with the Special Master, a list of over 1,000 parties who, according to the New Jersey Department of Environmental Protection, discharged hazardous substances into the Newark Bay Complex. Subsequent investigation/discovery will determine which, if any of those parties or others not yet identified, should be joined in this case.



**RULE 4:6 CERTIFICATION**

The undersigned hereby certifies that this Answer to the Third-Party Complaint is being served within the time permitted by Case Management Order V.

**JURY DEMAND**

Third-Party Defendant Thomas & Betts Corporation hereby demands a trial by jury on all issues so triable.

**DESIGNATION OF TRIAL COUNSEL**

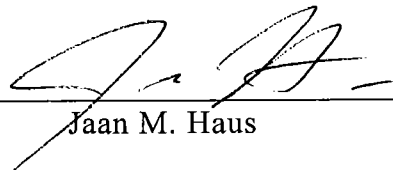
Pursuant to Rule 4:25-4, Samuel P. Moulthrop is hereby designated as trial counsel for Third-Party Defendant Thomas & Betts Corporation in this matter.

By:   
Samuel P. Moulthrop  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, New Jersey 07962  
(973) 538-0800

Dated: November 16, 2009

**CERTIFICATE OF SERVICE**

I certify that Thomas & Betts Corporation's Answer to Third-Party Complaint "D" was filed with the Clerk of Court, Superior Court of New Jersey, Essex County, by hand delivery and was served electronically on all parties which have consented to service by posting on [www.sfile.com/njdepvocc](http://www.sfile.com/njdepvocc) on November 16, 2009. The following counsel of record were served on November 16, 2009 via first class, regular mail:

  
\_\_\_\_\_  
Jaan M. Haus

Dated: November 16, 2009

**THIRD PARTY DEFENDANTS SERVICE LIST**

Joseph B. Fiorenzo, Esq.  
Sokol, Behot & Fiorenzo  
433 Hackensack Avenue  
Hackensack, NJ 07601

Thomas M. Egan, Esq.  
Assistant Municipal Attorney  
City of Clifton Law Department  
900 Clifton Avenue  
Clifton, NJ 07013

Eric S. Aronson, Esq.  
Greenberg Traurig, LLP  
200 Park Avenue  
Florham Park, NJ 07932

Steven R. Gray, Esq.  
Water, McPherson, McNeill, P.C.  
300 Lightning Way  
P.O. Box 1560  
Secaucus, NJ 07096

Paul Casteleiro, Esq.  
200 Washington Street, 5<sup>th</sup> Floor  
Hoboken, NJ 07030

John A. Daniels, Esq.  
Daniels & Daniels LLC  
6812 Park Avenue  
Guttenberg, NJ 07093

Gerald Poss, Esq.  
Gerald Poss, P.A. & Associates  
58 Vose Avenue  
South Orange, NJ 07079-2026

Anthony J. Reitano, Esq.  
Herold Law, PA  
25 Independence Boulevard  
Warren, NJ 07059-6747

John P. McGovern, Esq.  
Assist City Attorney  
City of Orange Township  
29 North Day Street  
Orange, NJ 07050

Corinne A. Goldstein, Esq.  
Covington & Burling, LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004

Kenneth H. Mack, Esq.  
Fox Rothschild LLP  
997 Lenox Drive, Building Three  
Lawrenceville, NJ 08648

Thomas Spiesman, Esq.  
Porzio Bromberg & Newman, P.C.  
100 Southgate Parkway  
Morristown, NJ 07962

Carl R. Woodward, III, Esq.  
Brian H. Fenlon, Esq.  
Carella, Byrne, Bain, Gilfillan, Cecchi,  
Stewart & Olstein  
5 Becker Farm Road  
Roseland, NJ 07068