

2009 WL 10750952

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United States District Court, D. New Jersey,
Newark Vicinage.

UNITED STATES of America, Plaintiff,

v.

BECKMAN COULTER, INC., et al., Defendants.

New Jersey Department of Environmental
Protection, et al., Plaintiffs,

v.

American Thermoplastics Corp., et al., Defendants.

Civil Action No. 98-CV-4812 (WHW),

Civil Action No. 98-CV-4781 (WHW)

|

Signed June 15, 2009

|

Filed June 16, 2009

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BAR ORDER AS TO CONTRIBUTION AND OTHER CLAIMS

WILLIAM B. WALLS, UNITED STATES DISTRICT
COURT JUDGE

***1** WHEREAS,

1. A settlement has been reached in these consolidated cases (Actions) and is embodied in a Partial Consent Decree (the Decree) between the United States, EPA, the State, the NJDEP and federal, state and local Natural Resource trustees (collectively, the Plaintiffs) on the one hand, and the Settling Federal Agencies (as defined in the Decree), Settling Defendants listed on Appendix A to the Decree and members of the Settling Municipal Defendants Group listed on Appendix B to the Decree (both of which are attached hereto), (collectively, the Bar Order Settling Defendants) on the other hand; and

2. Pursuant to the Decree, certain of the Bar Order Settling Defendants together agree to pay amounts specified therein to settle their respective alleged liability with regard to the Combe Fill South Landfill Superfund Site (the Site) in exchange for covenants not to sue, releases and other protections provided by the Plaintiffs; and

3. The signatories to the “Stipulation Between the United States, the State of New Jersey, and Certain Bar Order Settling Defendants” (attached hereto as Exhibit A), agree to the entry of the Decree and this Bar Order; and

4. The Case Management Order entered by this Court on June 2, 1999, as amended (CMO), establishes an alternative dispute resolution (ADR Process) in these Actions, and sets forth the respective rights and obligations of parties that have opted into, and parties that have opted out of, the ADR Process, including obligations to pay ADR process fees and expenses and Liaison Counsel fees; and

5. The Settlement Process Protocol Order entered by this Court on December 21, 1999 (Settlement Order) requires the parties to these Actions to engage in settlement discussions.

IT IS HEREBY ORDERED AS FOLLOWS:

The following sets forth the rights and obligations of the Plaintiffs and Bar Order Settling Defendants pursuant to the CMO and the Settlement Order, as of the effective date of the Decree:

6. Conclusion of the ADR Process. The ADR Process shall be deemed to have concluded upon entry of the Decree.

7. Bar Order as to Contribution and Other Claims. Except as otherwise provided in the Decree, (a) all Claims (as hereinafter defined) asserted, or to be asserted, or which could be asserted against any Bar Order Settling Defendant by the Plaintiffs, Bar Order Settling Defendants, or by any other entity or person for matters in connection with the Site, under Sections 106, 107, or 113 of CERCLA, Section 7003 of the Resource Conservation and Recovery Act, [42 U.S.C. § 6973](#), the Spill Act, the Closure Act, the WPCA, the SWMA, and or any other federal, state or local statute, regulation, rule, ordinance, law or common law, as the same may be amended or superseded and, (b) as to the Site, any other claim for relief or cause of action including those based on contractual undertakings among the Bar Order Settling Defendants, are hereby barred, permanently enjoined, dismissed with prejudice, satisfied and are otherwise unenforceable in the Actions or any other proceeding.

***2 8. Definitions.** Unless otherwise defined, terms used in this Order shall have the meaning set forth in the Decree. For purposes of this Order:

A. “Claims” shall include any and all suits, claims for relief (including claims based in contract, indemnification or guarantee), damages, judgments, causes of action, directives, orders, decrees, liabilities, losses, penalties, fines, costs and/or expenses, past, present, or future, whether known or unknown, brought by any person or entity, in connection with the Site as to:

(1) environmental conditions and environmental contamination at, on, under, above, in, or emanating from the Site;

(2) the subject matter of the Actions;

(3) all Response Actions taken at or in connection with the Site;

(4) all Response Costs;

(5) all Natural Resource Damages;

(6) all costs in connection with the OU1 ROD, the ESD, and/or the OU2 ROD or any other future ROD, amended ROD, ESD, or five-year review of the ROD for the Site.

(7) Claims shall not include:

(a) Any and all claims for property damage (other than for “Matters Addressed” in the Decree) and personal injury by parties other than the Plaintiffs for money damages, restitution, or diminution of value based upon statutory or common-law claims (including tort or negligence theories), excepting any such claims asserting negligent performance of a Response Action by the Plaintiffs, other responsible parties or any contractor or consultant retained by them;

(b) Any and all claims of whatever nature for environmental contamination resulting from disposal, release or threatened release of hazardous substances at a location other than the Site; and

(c) Any and all claims of whatever nature for criminal liability in connection with the Site.

B. “Consent Decree” or “Decree” shall mean that Agreement entitled “PARTIAL CONSENT DECREE BETWEEN PLAINTIFFS, UNITED STATES OF AMERICA, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ADMINISTRATOR OF THE NEW JERSEY

SPILL COMPENSATION FUND, AND SETTling DEFENDANTS, SETTling FEDERAL AGENCIES AND SETTling MUNICIPAL GROUP PARTIES” which was lodged with this Court.

C “Response Actions” shall mean any investigation, characterization, removal or remediation in connection with environmental conditions or contamination at, on, under, or emanating from the Site (including environmental conditions or environmental contamination off the Site, related to the Site's operation, arising from or emanating from any wastes disposed of in the immediate vicinity of, but beyond, the Site's boundaries, and including the Removal Action, OU 1 Remedial Action, OU 2 Remedial Action and O&M pursuant to any statute (including but not limited to, CERCLA, RCRA, [42 U.S.C. § 6973](#) as amended, the Federal Water Pollution Control Act, [33 U.S.C. § 1251, et seq.](#), as amended, the Clean Air Act, [42 U.S.C. § 7401, et seq.](#), as amended; 106, 107, or 113 of CERCLA, Section 7003 of RCRA, the Spill Act, the Closure Act, the WPCA and/or the SWMA), and any other federal, state and local statute, rule, regulation, ordinance, law or common law as the same may be amended or superseded.

9. In the event a claim is brought against any Bar Order Settling Defendant that is not barred by Paragraph 7 of this Order, then such Bar Order Settling Defendant shall be entitled to assert any and all claims for relief, not otherwise barred by the Decree or this Bar Order, arising out of or relating to such claim, against any and all other persons, including without limitation, any other Bar Order Settling Defendant.

***3** 10. This Bar Order shall be construed consistently with and to effectuate the purposes of the Decree.

11. The protections afforded by this Bar Order shall also be deemed to be extended to all parties who have previously resolved their liability to the Plaintiffs in the Actions.

12. Nothing in this Bar Order shall be deemed to limit rights reserved in Paragraph 26 of the Decree.

SO ORDERED.

EXHIBIT A

STIPULATION BETWEEN THE UNITED STATES, THE STATE OF NEW JERSEY, AND CERTAIN BAR ORDER SETTling DEFENDANTS

The Parties hereby consent to the lodging and entry of the Decree and the Bar Order as to Contribution and Other Claims (Bar Order). The Parties further agree that, except as expressly provided in the Decree and Bar Order, the lodging and entry of said Decree and Bar Order, settling claims between the Plaintiffs and Bar Order Settling Defendants, shall not be deemed an admission of liability or waiver of rights, claims and defenses.

This Stipulation may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have hereby executed this Stipulation on the date herein underwritten.

FOR THE UNITED STATES OF AMERICA

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January 26, 2009

In executing this signature page to the Bar Order as to Contribution and Other Claims (the Bar Order), counsel signs on behalf of the United States in its capacity as Plaintiff and on behalf of the Federal Defendants. Further, pursuant to Paragraph 7 of the Bar Order (“Except as otherwise provided in the Decree . . .”), the United States reserves its rights under Section VIII (Reservation of Rights by Plaintiffs) and elsewhere in the Decree as if expressly alleged in the Bar Order.

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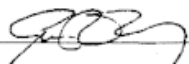
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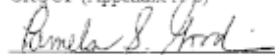

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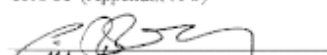
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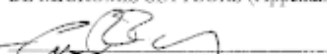
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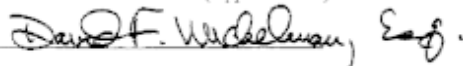
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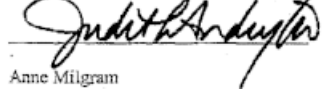
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