



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ASHLAND INC.; INTERNATIONAL SPECIALTY
PRODUCTS INC.; ISP ENVIRONMENTAL SERVICES
INC.; and ISP CHEMCO INC.,

Plaintiffs,

v.

THE SAMUEL J. HEYMAN 1981 CONTINUING
TRUST FOR LAZARUS S. HEYMAN; THE SAMUEL J.
HEYMAN 1981 CONTINUING TRUST FOR ELEANOR
S. HEYMAN; THE SAMUEL J. HEYMAN 1981
CONTINUING TRUST FOR JENNIFER L. HEYMAN;
THE SAMUEL J. HEYMAN 1981 CONTINUING
TRUST FOR ELIZABETH D. HEYMAN; THE
LAZARUS S. HEYMAN AGE 50 TRUST FOR ASSETS
APPOINTED UNDER WILL OF LAZARUS S.
HEYMAN; THE ELEANOR S. HEYMAN AGE 50
TRUST FOR ASSETS APPOINTED UNDER WILL OF
LAZARUS S. HEYMAN; THE JENNIFER L. HEYMAN
AGE 50 TRUST FOR ASSETS APPOINTED UNDER
WILL OF LAZARUS S. HEYMAN; THE ELIZABETH
D. HEYMAN AGE 50 TRUST FOR ASSETS
APPOINTED UNDER WILL OF LAZARUS S.
HEYMAN; THE HORIZON HOLDINGS RESIDUAL
TRUST; RFH INVESTMENT HOLDINGS LLC; THE
2013 SAMUEL J. HEYMAN 1981 CONTINUING
TRUST FOR LAZARUS S. HEYMAN; THE 2013
SAMUEL J. HEYMAN 1981 CONTINUING TRUST
FOR ELEANOR HEYMAN PROPP; THE 2013
SAMUEL J. HEYMAN 1981 CONTINUING TRUST
FOR JENNIFER HEYMAN MILLSTONE; THE 2013
SAMUEL J. HEYMAN 1981 CONTINUING TRUST
FOR ELIZABETH HEYMAN WINTER; THE 2013
LAZARUS S. HEYMAN AGE 50 TRUST FOR ASSETS
APPOINTED UNDER WILL OF LAZARUS S.
HEYMAN; THE 2013 ELEANOR HEYMAN PROPP
AGE 50 TRUST FOR ASSETS APPOINTED UNDER
WILL OF LAZARUS S. HEYMAN; THE 2013
JENNIFER HEYMAN MILLSTONE AGE 50 TRUST
FOR ASSETS APPOINTED UNDER WILL OF
LAZARUS S. HEYMAN; THE 2013 ELIZABETH

C.A. No. N15C-10-176 EMD CCLD

TRIAL BY JURY OF TWELVE
DEMANDED

HEYMAN WINTER AGE 50 TRUST FOR ASSETS APPOINTED UNDER WILL OF LAZARUS S. HEYMAN; THE 2015 HORIZON HOLDINGS RESIDUAL TRUST FOR LAZARUS S. HEYMAN; THE 2015 HORIZON HOLDINGS RESIDUAL TRUST FOR ELEANOR HEYMAN PROPP; THE 2015 HORIZON HOLDINGS RESIDUAL TRUST FOR JENNIFER HEYMAN MILLSTONE; THE 2015 HORIZON HOLDINGS RESIDUAL TRUST FOR ELIZABETH HEYMAN WINTER; and LINDEN PROPERTY HOLDINGS LLC,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs, Ashland Inc. (“Ashland”), International Specialty Products Inc. (“ISP”), ISP Environmental Services Inc. (“IES”), and ISP Chemco Inc. (“Chemco”) (collectively “Plaintiffs”), as and for their First Amended Complaint against the above-listed Defendants (collectively “Defendants”), hereby allege as follows:

NATURE OF ACTION

1. This action seeks a judgment against a number of parties who are responsible for the remediation of a certain parcel of contaminated land located in Linden, New Jersey (the “LPH Site”): the former shareholders of ISP, who sold ISP to Ashland in 2011 and who also owned and controlled the former owners of the LPH Site, GAF Corporation and GAF Chemicals Corporation, and any and all of their successors; and Linden Property Holdings LLC, the current owner of the LPH Site.

2. As to Defendants The Samuel J. Heyman 1981 Continuing Trust For Lazarus S. Heyman; The Samuel J. Heyman 1981 Continuing Trust For Eleanor S. Heyman; The Samuel J. Heyman 1981 Continuing Trust For Jennifer L. Heyman; The Samuel J. Heyman 1981 Continuing Trust For Elizabeth D. Heyman; The Lazarus S. Heyman Age 50 Trust For Assets

Appointed Under Will of Lazarus S. Heyman; The Eleanor S. Heyman Age 50 Trust For Assets
Appointed Under Will of Lazarus S. Heyman; The Jennifer L. Heyman Age 50 Trust For Assets
Appointed Under Will of Lazarus S. Heyman; The Elizabeth D. Heyman Age 50 Trust For
Assets Appointed Under Will of Lazarus S. Heyman; The Horizon Holdings Residual Trust; and
RFH Investment Holdings LLC (the “Heyman Defendants”), and as to Defendants The 2013
Samuel J. Heyman 1981 Continuing Trust for Lazarus S. Heyman, The 2013 Samuel J. Heyman
1981 Continuing Trust for Eleanor Heyman Propp, The 2013 Samuel J. Heyman 1981
Continuing Trust for Jennifer Heyman Millstone, The 2013 Samuel J. Heyman 1981 Continuing
Trust for Elizabeth Heyman Winter, The 2013 Lazarus S. Heyman Age 50 Trust for Assets
Appointed Under Will of Lazarus S. Heyman, The 2013 Eleanor Heyman Propp Age 50 Trust for
Assets Appointed Under Will of Lazarus S. Heyman, The 2013 Jennifer Heyman Millstone Age
50 Trust for Assets Appointed Under Will of Lazarus S. Heyman, The 2013 Elizabeth Heyman
Winter Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman, The 2015 Horizon
Holdings Residual Trust for Lazarus S. Heyman, The 2015 Horizon Holdings Residual Trust for
Eleanor Heyman Propp, The 2015 Horizon Holdings Residual Trust for Jennifer Heyman
Millstone, and The 2015 Horizon Holdings Residual Trust for Elizabeth Heyman Winter (the
“Heyman Successor Defendants”), this action seeks a declaratory judgment pursuant to 10 *Del.*
C. §§ 6501 *et seq.* and Superior Court Civil Rule 57 declaring that the Heyman Defendants and
the Heyman Successor Defendants are in breach of a certain Stock Purchase Agreement between
the Heyman Defendants (as the sellers) and Ashland (as the buyer), dated as of May 30, 2011 and
amended thereafter (the “SPA”) (excerpts annexed to the Complaint as Exhibit A)¹, and are

¹ Plaintiffs refer to and incorporate herein, as though annexed hereto, all Exhibits annexed to the Complaint.

contractually obligated under the SPA to perform and bear all expenses associated with the environmental cleanup of contamination at and in the vicinity of the LPH Site that was mandated by the New Jersey Department of Environmental Protection (“NJDEP”) pursuant to an Administrative Consent Order and which they agreed to conduct in the SPA, and, in addition, seeks monetary recovery under the common law.

3. As to Defendant Linden Property Holdings LLC (“LPH”), this action seeks a declaratory judgment pursuant to 10 *Del. C.* §§ 6501 *et seq.* and Superior Court Civil Rule 57 declaring that LPH is responsible for remediating contamination at and in the vicinity of the LPH Site that was mandated by NJDEP pursuant to an Administrative Consent Order, and monetary recovery under the New Jersey Spill Compensation and Control Act (“Spill Act”) and the common law.

THE PARTIES

4. Ashland is a corporation organized under the laws of the State of Kentucky, with its principal place of business at 50 East RiverCenter Boulevard, Covington, Kentucky. Ashland has offices located in Bridgewater, New Jersey. Ashland is a leading global specialty chemical company with customers located in more than 100 countries.

5. ISP is a corporation organized under the laws of the State of Delaware, with its principal place of business at 50 East RiverCenter Boulevard, Covington, Kentucky. ISP has offices located in Bridgewater, New Jersey. ISP is a subsidiary of Ashland.

6. IES is a corporation organized under the laws of the State of Delaware, with its principal place of business at 50 East RiverCenter Boulevard, Covington, Kentucky. IES has offices located in Bridgewater, New Jersey. IES is a subsidiary of ISP and, in turn, Ashland.

7. Chemco is a corporation organized under the laws of the State of Delaware, with its principal place of business at 50 East RiverCenter Boulevard, Covington, Kentucky. Chemco has offices located in Bridgewater, New Jersey. Chemco is a subsidiary of ISP and, in turn, of Ashland.

8. Defendant The Samuel J. Heyman 1981 Continuing Trust for Lazarus S. Heyman is a trust created under the laws of the State of Connecticut.

9. Defendant The Samuel J. Heyman 1981 Continuing Trust for Eleanor S. Heyman is a trust created under the laws of the State of Connecticut.

10. Defendant The Samuel J. Heyman 1981 Continuing Trust for Jennifer L. Heyman is a trust created under the laws of the State of Connecticut.

11. Defendant The Samuel J. Heyman 1981 Continuing Trust for Elizabeth D. Heyman is a trust created under the laws of the State of Connecticut.

12. Defendant The Lazarus S. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman is a trust created under the laws of the State of Connecticut.

13. Defendant The Eleanor S. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman is a trust created under the laws of the State of Connecticut.

14. Defendant The Jennifer L. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman is a trust created under the laws of the State of Connecticut.

15. Defendant The Elizabeth D. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman is a trust created under the laws of the State of Connecticut.

16. Defendant The Horizon Holdings Residual Trust is a trust created under the laws of the State of Delaware.

17. Defendant RFH Investment Holdings LLC is a limited liability company created under the laws of the State of Delaware.

18. Upon information provided by Defendants' counsel, Defendant The Samuel J. Heyman 1981 Continuing Trust for Lazarus S. Heyman has been distributed into, and all of its assets and liabilities were transferred to, Defendant The 2013 Samuel J. Heyman 1981 Continuing Trust for Lazarus S. Heyman.

19. Upon information provided by Defendants' counsel, Defendant The Samuel J. Heyman 1981 Continuing Trust for Eleanor S. Heyman has been distributed into, and all of its assets and liabilities were transferred to, Defendant The 2013 Samuel J. Heyman 1981 Continuing Trust for Eleanor Heyman Propp.

20. Upon information provided by Defendants' counsel, Defendant The Samuel J. Heyman 1981 Continuing Trust for Jennifer L. Heyman has been distributed into, and all of its assets and liabilities were transferred to, Defendant The 2013 Samuel J. Heyman 1981 Continuing Trust for Jennifer Heyman Millstone.

21. Upon information provided by Defendants' counsel, Defendant The Samuel J. Heyman 1981 Continuing Trust for Elizabeth D. Heyman has been distributed into, and all of its assets and liabilities were transferred to, Defendant The 2013 Samuel J. Heyman 1981 Continuing Trust for Elizabeth Heyman Winter.

22. Upon information provided by Defendants' counsel, Defendant The Lazarus S. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman has been distributed into, and all of its assets and liabilities were transferred to, Defendant The 2013 Lazarus S. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman.

23. Upon information provided by Defendants' counsel, Defendant The Eleanor S. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman has been distributed into, and all of its assets and liabilities were transferred to, Defendant The 2013 Eleanor Heyman Propp Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman.

24. Upon information provided by Defendants' counsel, Defendant The Jennifer L. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman has been distributed into, and all of its assets and liabilities were transferred to, Defendant The 2013 Jennifer Heyman Millstone Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman.

25. Upon information provided by Defendants' counsel, Defendant The Elizabeth D. Heyman Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman has been distributed into, and all of its assets and liabilities were transferred to, Defendant The 2013 Elizabeth Heyman Winter Age 50 Trust for Assets Appointed Under Will of Lazarus S. Heyman.

26. Upon information provided by Defendants' counsel, Defendant The Horizon Holdings Residual Trust has been divided into four (4) parts and has been distributed into, and all of its assets and liabilities were transferred to, Defendants The 2015 Horizon Holdings Residual Trust for Lazarus S. Heyman, The 2015 Horizon Holdings Residual Trust for Eleanor Heyman Propp, The 2015 Horizon Holdings Residual Trust for Jennifer Heyman Millstone, and The 2015 Horizon Holdings Residual Trust for Elizabeth Heyman Winter.

27. Upon information provided by Defendants' counsel, the Heyman Successor Defendants are the successors to the Heyman Defendants (excluding RFH Investment Holdings LLC) and are bound by the SPA and the Heyman Defendants' obligations under the SPA.

28. To the extent the Heyman Defendants purported to delegate any of their obligations under the SPA to the Heyman Successor Defendants, by operation of law or otherwise, without the prior written consent of Ashland and/or otherwise in violation of the SPA, any such purported delegation is null and void and shall not operate to relieve the Heyman Defendants or any of their successors (including the Heyman Successor Defendants), assigns, or transferees of their obligations under the SPA.

29. Defendant LPH is a limited liability company created under the laws of the State of Delaware with its principal place of business at 1 Campus Drive, Parsippany, New Jersey.

30. LPH is the agent and designee of the Heyman Defendants.

JURISDICTION AND VENUE

31. Pursuant to Section 9.8 of the SPA, Ashland and the Heyman Defendants and the Heyman Successor Defendants agreed to submit to the exclusive jurisdiction of any state or federal court sitting in the State of Delaware in any action or proceeding arising out of or relating to the SPA and further agreed that service of process in any such action or proceeding shall be effective if notice is given in accordance with Section 9.1 of the SPA. Ashland and the Heyman Defendants and the Heyman Successor Defendants further agreed to waive any claim of inconvenient forum or other challenge to venue or jurisdiction in such court. In addition, pursuant to Section 9.8 of the SPA, Ashland and the Heyman Defendants and the Heyman Successor Defendants agreed that the SPA shall be governed by or construed under the laws of the State of Delaware, without regard to principles of conflict of laws. Accordingly, jurisdiction and venue are appropriate in this Court pursuant to 6 *Del. C.* § 2708. LPH is a limited liability company organized under the laws of the State of Delaware and, as such, jurisdiction and venue are appropriate in this Court.

FACTS AS TO ALL COUNTS

THE HISTORY OF THE LPH SITE

32. The LPH Site is located at 4000 Road to Grasselli, Linden, New Jersey. It is currently identified on the tax map of the City of Linden as Block 587, Lots 1 and 2.01.

33. Beginning in or around 1919, and continuing until 1991, GAF Corporation, GAF Chemicals Corporation, and their predecessors and successors owned and conducted chemical manufacturing operations at the LPH Site. Those operations involved the disposal and discharge of hazardous substances (including but not limited to heavy metals and organic chemicals) both on the LPH Site and in off-site areas. NJDEP has found that hazardous substances disposed of and/or discharged on the LPH Site prior to 1991, including but not limited to heavy metals such as antimony, lead, mercury and arsenic and organic compounds such as benzene, chlorobenzene, chromium, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, naphthalene, nitrobenzene, phenol, PCBs, toluene, and xylene, emanated from, and continue to emanate from, the LPH Site into off-site areas.

34. GAF Corporation and GAF Chemicals Corporation discovered extensive contamination at the LPH Site during the 1970s and 1980s.

35. From the 1980s to the present, GAF Corporation and GAF Chemicals Corporation, as well as their successors, have been owned and controlled by the Heyman Defendants and/or the Heyman Successor Defendants and/or either of their predecessor(s).

36. Plaintiffs have always been distinct corporate entities from, and are not affiliated with, GAF Chemicals Corporation or GAF Corporation or any of their respective corporate affiliates or successors.

37. On June 16, 1989, GAF Chemicals Corporation entered into an Administrative Consent Order (the “ACO”) (annexed to the Complaint as Exhibit B) with NJDEP concerning environmental contamination at and around the LPH Site. Among numerous other requirements, the ACO requires GAF Chemicals Corporation to investigate and remediate all contamination, including soil, surface water, and groundwater contamination, at the LPH Site, as well as all contamination that was emanating from, would in the future emanate from, or had already emanated from the LPH Site.

38. In 1991, the Heyman Defendants or their predecessor(s) incorporated ISP as a subsidiary of GAF Chemicals Corporation.

39. Also in 1991, the Heyman Defendants or their predecessor(s) incorporated IES as a subsidiary of ISP.

40. GAF Chemicals Corporation transferred ownership of the LPH Site to IES in 1991.

41. Upon information and belief, the Heyman Defendants or their predecessor(s) created IES, arranged for the transfer of the LPH Site to IES, and volunteered IES to complete the remediation required by the ACO so that the remediation under the ACO could be completed and the LPH Site made suitable for redevelopment.

42. In or about 1996 and 1997, the Heyman Defendants or their predecessor(s) spun off ISP from GAF Chemicals Corporation and its affiliates. This terminated the corporate relationship of ISP (and its subsidiary, IES) with GAF Chemicals Corporation and its affiliates, as the stock of ISP was distributed to the Heyman Defendants or their predecessors. At the time of the spin-off transactions, the Heyman Defendants or their predecessor(s) controlled GAF Corporation, GAF Chemicals Corporation, ISP, and IES.

43. Upon information and belief, the 1996/1997 spin-off of ISP (and its subsidiary, IES) furthered the plan of the Heyman Defendants or their predecessor(s) to have IES complete the remediation of the LPH Site under the ACO so that the Heyman Defendants or their predecessor(s) could redevelop the LPH Site.

44. NJDEP reminded the Heyman Defendants or their predecessor(s) of the requirement under the ACO to address off-site contamination at least two times prior to Ashland's acquisition of ISP, in 2005 and 2007.

45. The ACO was amended in 2006 (the "ACO Amendment") (annexed to the Complaint as Exhibit C).

46. Upon information and belief, the Heyman Defendants or their predecessor(s) arranged for the ACO Amendment and volunteered IES to be a co-signatory to the ACO.

47. In its findings, the ACO Amendment recited that IES "has assumed responsibility for the 1989 ACO," but the ACO Amendment did not remove GAF Chemicals Corporation from the ACO as an ordered party.

48. The ACO Amendment did not alter any of the requirements of the ACO regarding the investigation and remediation of the LPH Site, including the investigation and remediation of off-site contamination.

49. The ACO Amendment did not release GAF Chemicals Corporation from any of its obligations under the ACO, including the obligation to investigate and remediate off-site contamination.

50. The ACO Amendment required Chemco, a parent company of IES and another subsidiary of ISP, to establish and maintain a remediation funding source sufficient to cover the

cost of remediating the LPH Site in accordance with the ACO. Chemco established a remediation funding source in the amount of \$7,500,000.

ASHLAND'S ACQUISITION OF ISP

51. In August 2011, pursuant to the SPA, Ashland acquired ISP and its wholly-owned subsidiaries, IES and Chemco, from the Heyman Defendants. Under the terms of the SPA, Ashland paid approximately \$3.2 billion for ISP.

52. The Heyman Defendants are the "Seller Parties" identified in the SPA.

53. Section 5.14 of the SPA requires each party to take all actions reasonably required to carry out the provisions of the SPA.

54. Section 5.3(a) and Schedule 5.19, Section 2(f) of the SPA require the Heyman Defendants and the Heyman Successor Defendants to comply, at their sole cost and expense, with the New Jersey Industrial Site Recovery Act ("ISRA") and provide evidence of their compliance to Ashland.

55. ISRA requires the transferor of a property subject to its provisions to investigate and remediate both on-site and off-site contamination.

56. The 2011 sale of ISP to Ashland triggered the requirements of ISRA with respect to the LPH Site.

57. The Heyman Defendants and the Heyman Successor Defendants have not taken any steps to comply with the requirements of ISRA as they apply to the 2011 sale of ISP to Ashland.

LPH'S ASSUMPTION OF RESPONSIBILITY FOR THE LPH SITE

58. Schedule 5.19, Section 2(a) of the SPA requires Ashland to cause IES, immediately following Ashland's acquisition of ISP from the Heyman Defendants, to convey the

LPH Site to the Heyman Defendants or their designee. For purposes of this provision of the SPA, LPH is the Heyman Defendants' designee.

59. LPH is owned and controlled by some or all of the Heyman Defendants and /or the Heyman Successor Defendants.

60. On or about August 23, 2011, immediately after the consummation of the transaction outlined in the SPA, IES conveyed the LPH Site to LPH for one dollar.

61. Upon information and belief, at the time of its acquisition of the LPH Site, LPH had not conducted a preliminary assessment or a site investigation of the LPH Site, and had not undertaken any appropriate inquiry into the previous uses and ownership of the LPH Site, within the meaning of N.J. Stat. Ann. § 58:10-23.11g.d(2).

62. On July 18, 2011, when it was still controlled by the Heyman Defendants, IES provided notice to NJDEP of the pending transfer of the LPH Site to LPH and advised NJDEP that LPH would not be associated with IES or any ISP affiliate after August 25, 2011. That letter (annexed to the Complaint as Exhibit D) also stated that the remediation funding source previously provided by Chemco under the 2006 ACO Amendment would be replaced by a letter of credit issued on behalf of LPH.

63. IES's July 18, 2011 letter to NJDEP failed to advise NJDEP that pursuant Schedule 5.19, Section 2(f) of the SPA, LPH was required to become an ordered party on the ACO, or that under the same provision of the SPA, IES was to be removed from the ACO. Neither in the July 11, 2011 letter, nor at any subsequent time, did the Heyman Defendants, the Heyman Successor Defendants, or LPH request that NJDEP add LPH to the ACO or that NJDEP remove IES from the ACO.

64. LPH, through Building Materials Corporation of America, established a remediation funding source under the ACO in the form of a letter of credit in the amount of \$7,744,000 that became effective on August 5, 2011. This replaced the remediation funding source that had been established by Chemco.

65. At no time between its acquisition of the LPH Site in August 2011 and January 21, 2014 did LPH communicate to NJDEP its position that it was not responsible for satisfying all requirements of the ACO, including the investigation and remediation of off-site contamination.

66. LPH's course of dealing with NJDEP following its acquisition of the LPH Site demonstrates the Heyman Defendants', the Heyman Successor Defendants', and LPH's acknowledgment of their continuing responsibility for satisfying the requirements of the ACO in accordance with the SPA.

67. Schedule 5.19, Section 2(f) of the SPA requires the Heyman Defendants and the Heyman Successor Defendants to use reasonable best efforts to amend the ACO so as to remove ISP and any of its subsidiaries from the ACO and to add LPH to the ACO as an ordered party. The Heyman Defendants and the Heyman Successor Defendants did not do so.

68. As required by the SPA, following its acquisition of the LPH Site in August 2011, LPH: (1) took over responsibility for the remediation funding source under the ACO when it obtained a letter of credit for \$7.744 million for the remediation of the LPH Site; (2) made payments to the State of New Jersey to discharge its obligations for compliance with the ACO for the Remediation Funding Source 1% Surcharge for the LPH Site; and, (3) applied for and obtained Remedial Action Permits ("RAPs") for soil and groundwater at the LPH Site, as required by the ACO and the Site Remediation Reform Act, N.J. Stat. Ann. §§ 58:10C-1 *et seq.*

(“SRRA”). LPH did not advise NJDEP in any of these submissions of its position that it was not responsible for satisfying all requirements of the ACO, including the investigation and remediation of off-site contamination.

69. On February 17, 2012, NJDEP issued RAPs for soil and for groundwater at the LPH Site to LPH, not to IES. IES was not a co-applicant for the soil RAP. The referenced site name on that permit and on correspondence from NJDEP forwarding the permit to LPH on that date is “Linden Property Holdings LLC/Former GAF Chemical Corporation Site.” Neither the soil RAP nor any of the accompanying correspondence lists or references IES in any way.

70. The RAP for soil expressly identifies LPH as the party responsible for conducting the remediation.

71. The Classification Exception Area/Well Restriction Area case information sheet and the Ground Water Monitoring Plan provided in the RAP for groundwater also list LPH as the sole permittee for the project and does not refer to IES.

LPH’S FAILURE TO COMPLY WITH THE ACO

72. After taking numerous affirmative steps to comply with the requirements of the ACO, LPH thereafter failed and refused to satisfy the remaining obligations under the ACO. LPH’s campaign to avoid responsibility for completing the work required by the ACO first consisted of efforts to deceive NJDEP into believing that all ACO requirements had already been completed, and later consisted of efforts to push the issue of off-site contamination into a future, regional effort to be overseen by federal authorities, and to foist its off-site responsibilities under the ACO onto IES.

73. Pursuant to Section 5.3(e) of the SPA, the parties must be given an opportunity in advance to review any communication to any Government entity “relating to matters that are the subject of this Agreement and the Ancillary Agreements.”

74. By letter dated July 3, 2012 (annexed to the Complaint as Exhibit E), Ray Merrell, Environmental Compliance Manager at LPH, requested written notice from NJDEP that LPH had satisfied all obligations under the ACO. LPH’s letter did not mention ISP or IES or assert that ISP or IES had any responsibility for completing any off-site work under the ACO.

75. Neither the Heyman Defendants, the Heyman Successor Defendants, nor LPH provided Ashland the opportunity to review LPH’s July 3, 2012 letter to NJDEP before it was sent, notwithstanding their obligation to do so under Section 5.3(e) of the SPA.

76. By letter dated December 23, 2013 (annexed to the Complaint as Exhibit F), NJDEP advised LPH that it had not completed all of the work required by the ACO. NJDEP’s letter specifically noted that the ACO required an investigation, ecological risk assessment, and remediation of off-site contamination.

77. The Heyman Defendants, who sold ISP to Ashland in 2011, had been reminded by NJDEP of the requirement under the ACO to address off-site contamination at least two previous times by letter, in 2005 and 2007 (annexed to the Complaint as Exhibit G). The Heyman Defendants withheld those letters from Ashland and its counsel during the due diligence period before Ashland’s acquisition of ISP under the SPA.

78. During the negotiation of the SPA, the Heyman Defendants withheld from Ashland, and took affirmative steps to conceal from Ashland, numerous documents concerning the LPH Site (including the 2005 and 2007 letters to regarding the need to address off-site contamination), the past ownership and operation of the LPH Site, the past owners and operators

of the LPH Site and their successors, and the corporate relationships and affiliations among the various owners and operators of the LPH Site.

79. Upon information and belief, during the negotiation of the SPA the Heyman Defendants shipped hundreds of boxes of documents and ISP working files relating to the LPH Site (and other sites) to its outside counsel, without notifying Ashland or its outside counsel of the transfer. The Heymans Defendants did not make the contents of those boxes available for inspection or review by Ashland or its counsel at any time prior to Ashland's acquisition of ISP under the SPA.

80. During the negotiation of the SPA, the Heyman Defendants and/or their counsel represented to Ashland and/or its counsel that all work required by the ACO was essentially complete, and did not advise Ashland or its counsel of any significant unmet obligations under the ACO, including any obligation to conduct an off-site ecological risk assessment or otherwise address off-site contamination.

81. After the closing of the SPA through the end of 2013, LPH and/or its counsel continued to represent to Ashland and/or its counsel that all work required by the ACO was essentially complete, and did not advise Ashland or its counsel of any significant unmet obligations under the ACO, including any obligation to conduct an off-site ecological risk assessment or otherwise address off-site contamination.

82. NJDEP has determined that the requirements of the ACO regarding off-site contamination have not been satisfied, and have not been modified or reduced in any way.

83. By letter dated January 21, 2014 (annexed to the Complaint as Exhibit H), LPH, through counsel, and without first presenting their communication to Ashland as required by Section 5.3(e) of the SPA, responded to NJDEP's December 23, 2013 letter and again sought a

determination from NJDEP that all requirements of the ACO had been satisfied. In that letter, LPH acknowledged that the LPH Site had been transferred from IES to LPH; that as a result of the property transfer, LPH took over all on-site responsibilities; that LPH had posted financial assurance with NJDEP in August 2011; that LPH had paid all RFS Surcharge payments since August 2011; and that LPH, as permittee, obtained two RAPs, for soil and groundwater, related to the LPH Site. LPH also claimed for the first time that IES, not LPH, was responsible for conducting any off-site ecological risk assessment under the ACO. LPH also claimed that off-site contamination was part of a “regional issue” being addressed by the U.S. Environmental Protection Agency.

84. In addition to failing to provide Ashland an opportunity to review and comment on LPH’s January 21, 2014 letter to NJDEP before sending it to NJDEP, LPH and the Heyman Defendants and the Heyman Successor Defendants did not advise Ashland or IES of the fundamental change in its position regarding responsibility for addressing off-site contamination under the ACO that it expressed to NJDEP in its January 21, 2014 letter.

85. In a message dated February 7, 2014 (annexed to the Complaint as Exhibit I), in-house counsel for LPH advised Ashland that, in contrast to the prior representations of the Heyman Defendants and LPH, as of 2007, there was additional remaining remedial work to be completed under the ACO off-site, including an ecological risk assessment. This was the first time that either the Heyman Defendants or LPH advised Ashland that there was off-site work required under the ACO that had not been completed or that Defendants had been aware since at least 2007 of such requirements, which Defendants had disclosed to Ashland.

86. In early 2014, LPH acknowledged the then-upcoming deadline under the SRRA for filing an extension request for the site remedial investigation under the ACO.

87. Notwithstanding that acknowledgement, LPH has not taken any steps to satisfy the outstanding remediation obligations under the ACO, and the Heyman Defendants and the Heyman Successor Defendants have not taken any steps to cause their agent and designee, LPH, to do so.

88. By letter dated April 9, 2014, LPH (annexed to the Complaint as Exhibit J), again through counsel, and without first presenting their communication to Ashland as required by Section 5.3(e) of the SPA, wrote to NJDEP. In that letter, LPH acknowledged that it had assumed responsibility for remediating on-site contamination at the LPH Site, but again asserted that IES bore responsibility for addressing off-site contamination under the ACO.

89. LPH's correspondence with NJDEP prior to January 21, 2014 and its in-house counsel's email of February 7, 2014 demonstrates that the Heyman Defendants, the Heyman Successor Defendants, and LPH are, and at all relevant times have been, clearly aware of their responsibility to comply with all aspects of the ACO, including the requirement to investigate and remediate off-site contamination. Prior to January 21, 2014, they appeared to Ashland to be doing so.

90. By letter dated February 18, 2014 (annexed to the Complaint as Exhibit K), counsel for Ashland and IES sent a letter to counsel for LPH requesting that, pursuant to the terms of the SPA, LPH execute an amendment and sign on as party to the ACO, obtain NJDEP approval to remove IES from the ACO, obtain an extension of the SRRA's statutory deadline of May 7, 2014 for the completion of the remedial investigation, and complete all work necessary to comply with the ACO. LPH failed and refused to comply with its obligations to complete these tasks and address all unmet obligations under the ACO, as required by the SPA.

91. Because of Defendants' failure and refusal to comply with their obligations under the SPA and the ACO, and to avoid penalties and other sanctions threatened by NJDEP, IES retained, on behalf of LPH, a Licensed Site Remediation Professional ("LSRP") and obtained an extension of the SRRA's statutory deadline of May 7, 2014 for the completion of the Remedial Investigation.

92. Plaintiffs have expended, and will continue to expend, significant sums of money to investigate and remediate contamination at and from the LPH Site.

93. In a message dated December 18, 2014 (annexed to the Complaint as Exhibit L), NJDEP notified LPH that it disagreed with LPH's contention, presented in an earlier letter, that LPH's remedial obligations at the LPH Site are limited to on-site remediation. The message expressed NJDEP's position that "LPH is obligated to conduct the remedial investigation of [the LPH Site] pursuant to the Spill Act and N.J.S.A. 58:10B-1.3 as the property owner. [The LPH Site] includes on-site contamination and all other areas to which hazardous substances discharges on the [LPH] Site have migrated."

94. By letter dated July 23, 2015 (annexed to the Complaint as Exhibit M), the Office of the Attorney General of New Jersey advised LPH that LPH had taken contradictory positions about the nature and purpose of the \$7,744,000 remediation funding source it established in 2011. The letter specifically rejected LPH's contentions, presented at various times during 2014 and 2015, that the \$7,744,000 remediation funding source it established in 2011 represented only the cost to complete on-site remediation, or only the cost of operating and monitoring of on-site engineering and institutional controls. The letter restated NJDEP's position that the \$7,744,000 remediation funding source established by LPH in 2011 was "a replacement of the [remediation funding source] originally required by the ACO for remediation of the entire site, including

remediation of offsite contamination,” and concluded that in light of LPH’s failure to complete the remediation of the LPH Site, as the person responsible for establishing the remediation funding source, NJDEP had the authority to draw upon LPH’s then-existing \$7,744,000 remediation funding source to complete the remediation of the LPH Site, including the remediation of off-site contamination.

95. By letter dated July 31, 2015 (annexed to the Complaint as Exhibit N), NJDEP confirmed that at a meeting held on July 22, 2015, NJDEP had given LPH the option of renewing the \$7,744,000 remediation funding source at a reduced amount or having NJDEP draw down on the existing remediation funding source.

96. Upon information and belief, LPH thereafter renewed its remediation funding source at the reduced amount proposed by NJDEP to guarantee the remaining cost of the remediation of the LPH Site, including remediation of off-site contamination.

**THE HEYMAN DEFENDANTS’ (AND THE HEYMAN SUCCESSOR DEFENDANTS’)
BREACHES OF THE SPA**

97. Schedule 5.19, Section 2(f) of the SPA provides, in relevant part:

[T]he Seller Parties shall use reasonable best efforts to amend any consent decree or other binding agreement with any Governmental Entity relating to the Linden Excluded Liabilities, and to replace or substitute any related financial assurance (including any bond or letter of credit), to include the name of the Linden Transferee following the Linden Transfer and, if permitted by NJDEP, to remove the name of ISP or any of the Companies therefrom.

98. Liability for investigation and remediation of the LPH Site as required by the ACO is included within the “Linden Excluded Liabilities” referenced in Schedule 5.19, Section 2(f) of the SPA.

99. The ACO is a “consent decree or other binding agreement with any Governmental Entity” within the meaning of Schedule 5.19, Section 2(f) of the SPA.

100. LPH is the “Linden Transferee” referenced in Schedule 5.19, Section 2(f) of the SPA.

101. The August 2011 transfer of the LPH Site from IES to LPH is the “Linden Transfer” referenced in Schedule 5.19, Section 2(f) of the SPA.

102. Schedule 5.19, Section 2(f) of the SPA requires the Heyman Defendants and the Heyman Successor Defendants to use their reasonable best efforts to amend the ACO so as to add LPH to the ACO as an ordered party and to remove ISP and any of its subsidiaries from the ACO.

103. The Heyman Defendants and the Heyman Successor Defendants have not taken any steps to amend the ACO so as to add LPH to the ACO as an ordered party and to remove ISP and any of its subsidiaries from the ACO.

104. The ACO, as amended by the 2006 ACO Amendment, as well as NJDEP’s regulations, requires the submission of an annual remediation cost review.

105. Schedule 5.19, Section 2(f) of the SPA requires the Heyman Defendants and the Heyman Successor Defendants to use reasonable best efforts to replace or substitute the remediation funding source established by ISP’s subsidiary, Chemco, for the ACO.

106. LPH established a remediation funding source for the ACO, but subsequently allowed it to expire and refused to establish a new remediation funding source for the full amount required by NJDEP. As a result, Ashland, on behalf of IES, was forced to establish a remediation funding source for the ACO.

107. Beginning with its December 23, 2013 response to LPH's July 3, 2012 letter, NJDEP repeatedly requested that the party responsible for completing the ACO submit the required annual remediation cost review, but LPH failed to do so.

108. LPH held and maintained the information needed to complete the remediation cost review demanded by NJDEP. That information was not available to IES. LPH did not provide the information to IES, and prevented IES from obtaining the information from the environmental consultants that had conducted the work at the LPH Site.

109. As a result of LPH's failure to submit an annual remediation cost review, and LPH's acts and omissions that prevented IES from obtaining the information needed to complete the remediation cost review, on July 21, 2015, NJDEP sent to IES, GAF Chemicals Corporation, and GAF Chemicals Corporation's successor a Demand for Stipulated Penalties in the amount of \$93,500 (annexed to the Complaint as Exhibit O).

110. None of the Defendants has paid any portion of the \$93,500 in stipulated penalties demanded by NJDEP.

111. Schedule 5.19, Section 2(e) of the SPA provides:

In connection with the Linden Transfer, the Seller Parties shall assume all Liabilities to the extent related to or arising from or existing at the Linden Subsidiary (subject to no assets other than Linden Excluded Assets being transferred to the Linden Subsidiary by Buyer or any of its Affiliates after the Closing) or the Linden Property, including Liabilities arising under or relating to (i) Environmental Laws, provided that such Liabilities shall not include any off-site migration or disposal of Hazardous Materials from the Linden Property prior to the Closing, any claims or damages associated with any off-site migration or disposal of Hazardous Material from the Linden Property prior to the Closing, and for the avoidance of doubt, any off-site contamination of soils, groundwater or sediments, any third party superfund sites including the Newark Bay Complex, any natural resources damages or

exposure claims relating to operations or discharges prior to Closing

112. LPH is the “Linden Subsidiary” referenced in Schedule 5.19, Section 2(e) of the SPA.

113. In Schedule 5.19, Section 2(e), the Heyman Defendants expressly excluded federal Superfund liability from their assumption of liability. If they had intended to exclude compliance with New Jersey law and the ACO, they certainly could have done so, but did not. The Heyman Defendants did not exclude compliance with New Jersey state law and the ACO from their assumption of liability. Indeed, in the SPA, the Heyman Defendants expressly agreed to add their designee, LPH, to the ACO as an ordered party and to remove IES from the ACO, and expressly assumed all liability for compliance with ISRA.

114. The limited role of IES and Chemco under the 2006 ACO Amendment effectively has been superseded by LPH’s assumption of responsibility for the LPH Site as required by the SPA.

115. In addition to their continuing obligations under the ACO, the Heyman Defendants and the Heyman Successor Defendants, as the parties controlling LPH, are responsible for all on-site environmental remediation, and any off-site migration of environmental contamination that occurred after August 23, 2011, whether under state or federal law.

116. Since August 2011, all ACO compliance activities relative to the LPH Site have been the responsibility and obligation of LPH and, through LPH, Defendants.

COMMUNICATIONS BETWEEN ASHLAND AND DEFENDANTS

117. Since February 2014, Ashland and IES, through their counsel, have corresponded on numerous occasions with Defendants, through their counsel, concerning the LPH Site and Defendants' failure and refusal to satisfy their New Jersey state law obligations under the SPA and the ACO.

118. In their communications with Defendants, Ashland and IES have consistently asserted that the requirements of the ACO regarding off-site contamination have not been satisfied, and that NJDEP has so concluded.

119. In their communications with Defendants, Ashland and IES have consistently asserted that Defendants are responsible for complying with the requirements of the ACO regarding off-site contamination and with all New Jersey state law requirements regarding the LPH Site.

120. In their communications with Defendants, Ashland and IES have consistently asserted that the Heyman Defendants have failed to satisfy several important obligations imposed upon them by the SPA, including the obligation to use reasonable best efforts to amend the ACO to include the name of its designee, LPH, and remove the name of ISP (or any of its Companies, including IES) from the ACO, and the obligation to comply with ISRA and to provide evidence of such compliance.

121. Ashland and IES have requested that Defendants take, and Defendants have repeatedly failed and refused to take, steps to satisfy their New Jersey state law obligations under the SPA and the ACO, including: amending the ACO to name LPH as the responsible party and to remove IES from the ACO; meeting the SRRA's statutory deadline, as extended to May 21, 2016, for the completion of the remedial investigation at the LPH Site, or obtaining a further

extension; retaining an LSRP to oversee the remediation of the LPH Site; establishing a remediation funding source under the ACO in the full amount required by NJDEP; and submitting annual remediation cost reviews as required by NJDEP.

122. Defendants have refused to participate in or fund any of the remaining off-site work required by NJDEP under the ACO.

123. Ashland and IES notified Defendants that if they failed to take the steps necessary to fulfill their obligations under the SPA and the ACO, Ashland and IES would deem that failure to constitute a refusal to perform and a request under Schedule 5.19, Section 2(d) of the SPA that Ashland perform those obligations at Defendants' sole cost and expense, and that, accordingly, IES, on behalf of LPH, would retain an LSRP and request an extension of the SRRA's statutory deadline to complete the remedial investigation, among other steps.

124. In response to a December 23, 2013 letter from NJDEP stating that the requirement to conduct a comprehensive off-site ecological risk assessment was relayed in a prior NJDEP letter dated September 3, 2005, LPH sent a letter to NJDEP dated January 21, 2014 (annexed to the Complaint as Exhibit H) requesting that IES perform that assessment. Based on the positions taken by LPH with respect to Ashland and IES in its January 21, 2014 letter, LPH has triggered Schedule 5.19, Section 2(d) under the SPA by requesting that Buyer or its designee (IES) engage in and manage Remedial Action at the Linden Property as described in or required by the ACO, as amended in 2006. In accordance with that provision, any work performed by IES (or Ashland) that is required under the ACO will be at Sellers' sole cost and expense.

125. Based on Defendants' improper refusal to comply with the terms of the SPA and requests of NJDEP, pursuant to Schedule 5.19, Section 2(d) of the SPA, Ashland retained an

LSRP and requested an extension of the SRRA's statutory deadline to complete the remedial investigation and off-site ecological risk assessment.

126. On March 19, 2014, on behalf of IES, the LSRP submitted a Remedial Investigation Complete Timeframe Extension Form (annexed to the Complaint as Exhibit P) and obtained the requested extension to perform the remedial investigation and off-site ecological risk assessment. On that submission to NJDEP, the LSRP noted that IES was acting on behalf of LPH with regard to the remediation.

127. Since March 2014, Plaintiffs have corresponded with NJDEP on numerous occasions concerning the remedial investigation and off-site ecological risk assessment.

128. In their communications with NJDEP, Plaintiffs have consistently asserted: (1) that they are not responsible for complying with the ACO; (2) that the 2006 Amendment did not result in their assumption of the obligations of GAF Chemicals Corporation under the ACO; (3) that the 2006 Amendment did not alter or release GAF Chemicals Corporation from any of the obligations of GAF Chemicals Corporation under the ACO; (4) that the 2006 Amendment only ordered that Chemco (a parent company of IES) establish and maintain a remediation funding source, which was later replaced and superseded by the remediation funding source established by LPH for the LPH Site; (5) that neither Ashland nor IES is the corporate successor to GAF Chemicals Corporation; (6) that LPH had assumed responsibility for complying with the requirements of the ACO; (7) that LPH, and not Ashland or IES, should be held responsible for satisfying all remaining obligations under the ACO, including any permits, operation and maintenance activities, and financial assurance necessary to complete that work; and (8) that GAF Chemicals Corporation has at all times been a distinct corporate entity separate from ISP and IES.

129. Ashland and IES have repeatedly requested that NJDEP recognize that LPH bears responsibility for completing all remaining work required by the ACO and, further, that GAF Chemicals Corporation remains the original and ordered party under the ACO.

COUNT I
DECLARATORY JUDGMENT - BREACH OF CONTRACT
(ASSERTED BY ASHLAND AGAINST HEYMAN DEFENDANTS
AND THE HEYMAN SUCCESSOR DEFENDANTS)

130. The allegations set forth in the preceding paragraphs are hereby repeated and realleged as though set forth fully herein.

131. Ashland and the Heyman Defendants entered into the SPA as of May 30, 2011.

132. Defendants are in breach of the SPA, which requires that Defendants act to amend the ACO to include the name of its designee, LPH, as well as to remove the name of ISP (or any of its Companies, including IES) from the ACO pursuant to the SPA, Schedule 5.19, Section 2(f).

133. Under the terms of the SPA, as amended, the ACO obligations and any actions or assessments necessary to comply with the ACO became the responsibility of the Heyman Defendants and their designated transferee, LPH, and the Heyman Successor Defendants. While LPH has complied with certain ACO requirements, the Heyman Defendants, the Heyman Successor Defendants, and LPH have failed to satisfy other important obligations under the SPA with respect to the LPH Site, including completion of the remedial investigation, as required by NJDEP.

134. Based on the positions taken by the Heyman Defendants' designee, LPH, with respect to Ashland and IES in its January 21, 2014 letter, LPH has triggered Schedule 5.19, Section 2(d) of the SPA in that LPH has requested that Ashland or its designee (IES) engage in

conduct to manage Remedial Action at the Linden Property as described in or required by the amended ACO.

135. NJDEP has confirmed that the requirement under the ACO to conduct a comprehensive off-site ecological risk assessment was communicated in 2005.

136. The requirements of the Industrial Site Responsibility Act, N.J. Stat. Ann. §§ 13:1K-6 *et seq.*, applied to the Heyman Defendants' sale of ISP (including the LPH Site) to Ashland in 2011.

137. The Heyman Defendants did not take any steps to comply with the requirements of ISRA as they applied to their 2011 sale of ISP to Ashland.

138. Plaintiff is entitled to a declaratory judgment that, in light of the Heyman Defendants' and LPH's abdication of their responsibilities under the ACO, as discussed above, any remedial work performed by IES (or Ashland) as required by NJDEP under the ACO and ISRA that was the responsibility of the Heyman Defendants and/or LPH is at the Heyman Defendants', the Heyman Successor Defendants', and/or LPH's sole cost and expense pursuant to Schedule 5.19, Section 2(d) of the SPA.

139. When LPH posted its remediation funding source under the ACO in August 2011, the Heyman Defendants had a duty to ensure that the ACO was amended to name LPH as the party responsible under the ACO, and to remove IES from the ACO, but the Heyman Defendants and the Heyman Successor Defendants failed to do so.

140. The Heyman Defendants and the Heyman Successor Defendants are still in breach of those obligation under the SPA.

141. Schedule 5.19, Section 2(f) of the SPA provides that the Heyman Defendants and their designee, LPH, are responsible at their sole cost and expense for compliance with ISRA for the LPH Site.

142. The Heyman Defendants and the Heyman Successor Defendants are also in breach of their obligations under the SPA in that they have presented no evidence that they have complied with ISRA.

143. The Heyman Defendants and the Heyman Successor Defendants are also in breach of the SPA for failure to present all of their post-SPA communications to NJDEP to Ashland prior to transmittal.

144. Under the terms of the SPA, the Heyman Defendants retained liability for environmental investigation and remediation of the LPH Site under the ACO and New Jersey state law, including both on-site and off-site contamination.

145. Pursuant to the SPA, the Heyman Defendants and the Heyman Successor Defendants have a joint and several contractual duty to undertake remediation of the LPH Site under the ACO and New Jersey state law, including both on-site and off-site contamination.

146. Pursuant to the SPA, the Heyman Defendants and the Heyman Successor Defendants are also responsible under the ACO, ISRA, other provisions of state law, and any applicable provisions of federal law for investigation and remediation of all on-site and off-site contamination arising from post-closing discharges and disposal at, and post-closing migration from, the LPH Site.

147. Pursuant to the SPA, Ashland has a contractual right to compel the Heyman Defendants and the Heyman Successor Defendants to specifically perform their obligations and

complete the remediation of the LPH Site under the ACO, ISRA, and other provisions of state law.

148. Section 9.9 of the SPA provides:

The parties acknowledge that their obligations hereunder are unique and that remedies at law, including monetary damages, will be inadequate in the event any party should default in the performance of its obligations under this Agreement. Accordingly, in the event of any such breach, the non-defaulting party shall be entitled to equitable relief (if the court so grants), without the proof of actual damages, including in the form of an injunction or injunctions or orders for specific performance . . . to prevent breaches of this Agreement and to order the defaulting party to affirmatively carry out its obligations under this Agreement[.]

149. The contractual promise by the Heyman Defendants to perform or pay for environmental investigation and remediation of the LPH Site under state law was a material part of the consideration for which Ashland bargained and paid under the SPA.

150. Each and all of the Heyman Defendants and the Heyman Successor Defendants have breached their contractual duty to Ashland by refusing to and otherwise failing to complete the environmental investigation and remediation of the LPH Site pursuant to New Jersey state law and the ACO.

151. Each and all of the Heyman Defendants and the Heyman Successor Defendants have breached their contractual duty to Ashland by refusing to and otherwise failing to comply with ISRA.

152. The Heyman Defendants' and the Heyman Successor Defendants' failure to perform their obligations under the ACO and ISRA constitutes a breach of the SPA.

153. Unless and until the Heyman Defendants and the Heyman Successor Defendants perform or pay for such environmental investigation and remediation under the ACO and ISRA, Ashland will be denied the benefits of the SPA.

154. Section 9.3 of the SPA provides, in pertinent part, that the SPA “shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns,” that “[n]o party to this Agreement may assign any of its rights or delegate any of its obligations under this Agreement, by operation of Law or otherwise, without the prior written consent of the other parties hereto,” and that “any attempted or purported assignment in violation of this Section 9.3 shall be null and void.”

155. The contractual promise by the Heyman Defendants to refrain from delegating any of their obligations under the SPA without the prior written consent of Ashland was a material part of the consideration for which Ashland bargained and paid under the SPA.

156. To the extent the Heyman Defendants purported to delegate any of their obligations under the SPA to the Heyman Successor Defendants, by operation of law or otherwise, without the prior written consent of Ashland and/or otherwise in violation of the SPA, any such purported delegation constitutes a breach of the SPA and is null and void and shall not operate to relieve the Heyman Defendants or any of their successors (including the Heyman Successor Defendants), assigns, or transferees of their obligations under the SPA.

157. Plaintiffs are entitled to a declaration that any purported delegation by the Heyman Defendants of any of their obligations under the SPA to the Heyman Successor Defendants, by operation of law or otherwise, without the prior written consent of Ashland and/or otherwise in violation of the SPA, is null and void and shall not operate to relieve the

Heyman Defendants or any of their successors (including the Heyman Successor Defendants), assigns, or transferees of their obligations under the SPA.

158. Ashland has been and continues to be damaged by the Heyman Defendants' and the Heyman Successor Defendants' breaches of the terms of the SPA.

WHEREFORE, Ashland respectfully requests that the Court enter judgment:

a. Declaring that the Heyman Defendants and the Heyman Successor Defendants are contractually obligated under the SPA for all environmental investigation and remediation efforts required at the LPH Site under the ACO, ISRA, and other provisions of state law, including payment for the LSRP, and a comprehensive off-site investigation, ecological risk assessment, and any necessary off-site remediation, and that the Heyman Defendants and the Heyman Successor Defendants are in breach of those obligations;

b. Declaring that the Heyman Defendants' January 21, 2014 letter to NJDEP and their continuing refusal to fulfill their obligations under the ACO and ISRA constitute a request pursuant to Schedule 5.19-2.(d) of the SPA that Ashland complete the remaining environmental investigation and remediation work required under the ACO at the Heyman Defendants' and the Heyman Successor Defendants' sole cost and expense;

c. Declaring that any purported delegation by the Heyman Defendants of any of their obligations under the SPA to the Heyman Successor Defendants, by operation of law or otherwise, without the prior written consent of Ashland and/or otherwise in violation of the SPA, is null and void and shall not operate to relieve the Heyman Defendants or any of their successors (including the Heyman Successor Defendants), assigns, or transferees of their obligations under the SPA;

d. Declaring that the Heyman Defendants and the Heyman Successor Defendants are contractually obligated under the SPA: (1) to add themselves and/or their designee, LPH, to the ACO; (2) to request that NJDEP remove IES, ISP, and any other ISP affiliates from the ACO; and (3) to comply with ISRA, and that the Heyman Defendants and the Heyman Successor Defendants are in breach of those obligations;

e. Declaring that the Heyman Defendants and the Heyman Successor Defendants are contractually obligated under the SPA to reimburse Ashland for all cleanup and removal costs and other costs incurred and to be incurred in performing any work under the ACO and New Jersey state law that should have been performed by the Heyman Defendants, the Heyman Successor Defendants, and/or LPH, as well as any stipulated penalties paid to NJDEP;

f. Declaring that Ashland shall present the Heyman Defendants and the Heyman Successor Defendants with monthly invoices for all costs and expenses incurred in connection with environmental investigation and remediation efforts under the ACO as amended, and that the Heyman Defendants and the Heyman Successor Defendants are obligated to reimburse Ashland for all costs and expenses incurred in connection with investigative and remediation efforts under the amended ACO within thirty (30) days of presentment of such invoices;

g. Entering judgment in Ashland's favor awarding damages in the amount expended by Ashland in accordance with proofs to be presented at trial, with the maximum lawfully allowable interest thereon;

h. Declaring that each and all of the Heyman Defendants and the Heyman Successor Defendants are contractually obligated to perform their obligations under the SPA and to immediately undertake all environmental investigation and remediation efforts of the LPH Site necessary to comply with the ACO, ISRA, and other provisions of New Jersey state law,

including payment for the LSRP, and a comprehensive off-site investigation, ecological risk assessment, and any necessary off-site remediation;

i. Declaring that each and all of the Heyman Defendants and the Heyman Successor Defendants are contractually obligated to immediately add themselves and/or their designee, LPH, to the ACO and request that NJDEP remove IES, ISP, and any other affiliates of ISP from the ACO;

j. Declaring that the Court shall retain jurisdiction to enforce the terms of its judgment; and

k. Granting Plaintiffs such other and further relief as is just and proper, including its counsel fees and costs for this action.

COUNT II
BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING
(ASSERTED BY ASHLAND AGAINST HEYMAN DEFENDANTS
AND THE HEYMAN SUCCESSOR DEFENDANTS)

159. The allegations set forth in the preceding paragraphs are hereby repeated and realleged as though set forth fully herein.

160. Every contract, including the SPA, contains an implied covenant of good faith and fair dealing.

161. The covenant of good faith and fair dealing requires each party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain.

162. If a contract confers discretion on one party, the implied covenant of good faith and fair dealing requires that the discretion be used reasonably and in good faith and consistent with the expectations of the parties at the time of the agreement.

163. As a result of this implied covenant, each of the Heyman Defendants and the Heyman Successor Defendants owed Ashland a duty to proceed in good faith and attempt to comply with their obligations under the SPA and ACO.

164. The Heyman Defendants and the Heyman Successor Defendants violated their duty of good faith and fair dealing by arbitrarily and unreasonably ignoring Ashland's requests and refusing to participate in the necessary environmental investigation and remediation of the LPH Site under the ACO and ISRA, as required by the SPA.

165. The Heyman Defendants and the Heyman Successor Defendants were obligated to use reasonable best efforts to include LPH as a responsible party on the ACO, as required by the SPA, and arbitrarily and unreasonably made no such attempt.

166. Ashland has been and continues to be damaged by the Heyman Defendants' and the Heyman Successor Defendants' breach of the implied covenant of good faith and fair dealing.

WHEREFORE, Ashland respectfully requests that the Court enter judgment:

a. Declaring that the Heyman Defendants and the Heyman Successor Defendants are contractually obligated under the SPA for all environmental investigation and remediation efforts required at the LPH Site under the ACO, ISRA, and other provisions of state law, including payment for the LSRP, and a comprehensive off-site investigation, ecological risk assessment, and any necessary off-site remediation, and that the Heyman Defendants and the Heyman Successor Defendants are in breach of those obligations;

b. Declaring that the Heyman Defendants' January 21, 2014 letter to NJDEP and their and the Heyman Successor Defendants' continuing refusal to fulfill their obligations under the ACO and ISRA constitute a request pursuant to Schedule 5.19, Section 2.(d) of the SPA that Ashland complete the remaining environmental investigation and remediation work required

under the ACO at the Heyman Defendants' and the Heyman Successor Defendants' sole cost and expense;

c. Declaring that the Heyman Defendants and the Heyman Successor Defendants are contractually obligated under the SPA: (1) to add themselves and/or their designee, LPH, to the ACO; (2) to request that NJDEP remove IES, ISP, and any other ISP affiliates from the ACO; and (3) to comply with ISRA, and that the Heyman Defendants and the Heyman Successor Defendants are in breach of those obligations;

d. Declaring that the Heyman Defendants and the Heyman Successor Defendants are contractually obligated under the SPA to reimburse Ashland for all cleanup and removal costs and other costs incurred and to be incurred in performing any work under the ACO and New Jersey state law that should have been performed by the Heyman Defendants, the Heyman Successor Defendants, and/or LPH, as well as any stipulated penalties paid to NJDEP;

e. Declaring that Ashland shall present the Heyman Defendants and the Heyman Successor Defendants with monthly invoices for all costs and expenses incurred in connection with environmental investigation and remediation efforts under the ACO as amended, and that the Heyman Defendants and the Heyman Successor Defendants are obligated to reimburse Ashland for all costs and expenses incurred in connection with investigative and remediation efforts under the amended ACO within thirty (30) days of presentment of such invoices;

f. Entering judgment in Ashland's favor awarding damages in the amount expended by Ashland in accordance with proofs to be presented at trial, with the maximum lawfully allowable interest thereon;

g. Declaring that each and all of the Heyman Defendants and the Heyman Successor Defendants are contractually obligated to perform their obligations under the SPA and to

immediately undertake all environmental investigation and remediation efforts of the LPH Site necessary to comply with the ACO, ISRA, and other provisions of New Jersey state law, including payment for the LSRP, and a comprehensive off-site investigation, ecological risk assessment, and any necessary off-site remediation;

h. Declaring that each and all of the Heyman Defendants and the Heyman Successor Defendants are contractually obligated to immediately add themselves and/or their designee, LPH, to the ACO and request that NJDEP remove IES, ISP, and any other affiliates of ISP from the ACO;

i. Declaring that the Court shall retain jurisdiction to enforce the terms of its judgment; and

j. Granting Plaintiffs such other and further relief as is just and proper, including its counsel fees and costs for this action.

COUNT III
UNJUST ENRICHMENT
(ASSERTED BY ASHLAND, IES, AND CHEMCO AGAINST
HEYMAN DEFENDANTS AND THE HEYMAN SUCCESSOR DEFENDANTS)

167. The allegations set forth in the preceding paragraphs are hereby repeated and realleged as though set forth fully herein.

168. The Heyman Defendants and the Heyman Successor Defendants have a duty to complete the environmental investigation and remediation of the LPH Site pursuant to the SPA.

169. Plaintiffs have demanded that the Heyman Defendants complete the environmental investigation and remediation of the LPH Site and otherwise comply with their obligations under the ACO, but the Heyman Defendants and the Heyman Successor Defendants have refused to do so.

170. Plaintiffs have expended and will expend monies on investigative and remediation activities at the LPH Site.

171. The Heyman Defendants and the Heyman Successor Defendants are responsible for the environmental investigation and remediation activities that Ashland has conducted and will conduct in the future at the LPH Site pursuant to the ACO.

172. Under the SPA, Ashland is entitled to remuneration from the Heyman Defendants and the Heyman Successor Defendants for environmental investigation and remediation activities conducted in connection with the LPH Site.

173. Plaintiffs have received no compensation, contribution, or remuneration from the Heyman Defendants or the Heyman Successor Defendants for environmental investigation and remediation activities conducted or to be conducted, or for money expended or to be expended, and the Heyman Defendants and the Heyman Successor Defendants unjustly have benefited and will benefit by such activities and expenditures. As a result, Plaintiffs have been and will be damaged, and the Heyman Defendants and the Heyman Successor Defendants have been and will be unjustly enriched at Plaintiffs' expense.

WHEREFORE, Plaintiffs demand judgment against the Heyman Defendants and the Heyman Successor Defendants:

a. Awarding damages in the amount expended by Plaintiffs, with the maximum lawfully allowable interest thereon;

b. Declaring that the Heyman Defendants and the Heyman Successor Defendants are liable to Plaintiffs for costs of future environmental investigation and remediation efforts of the LPH Site necessary to comply with the ACO and state law, with the maximum lawfully allowable interest thereon;

c. Declaring that the Court shall retain jurisdiction to enforce the terms of the judgment; and

d. Granting Plaintiffs such other and further relief as is just and proper, including its counsel fees and costs for this action.

**COUNT IV
COST RECOVERY AND
CONTRIBUTION UNDER THE SPILL ACT
(ASSERTED BY ASHLAND, IES AND CHEMCO AGAINST LPH)**

174. The allegations set forth in the preceding paragraphs are hereby repeated and realleged as though set forth fully herein.

175. LPH is a “person” within the meaning of the Spill Act, N.J. Stat. Ann. §§ 58:10-23.11 *et seq.*

176. LPH is the current owner of the LPH Site.

177. LPH acquired the LPH Site after 1993.

178. LPH did not take the steps necessary to entitle it to assert an “innocent purchaser” defense under the Spill Act.

179. Upon information and belief, discharges of hazardous substances at and from the LPH Site have occurred, and continue to occur, during LPH’s ownership of the LPH Site.

180. LPH is a discharger and/or a person in any way responsible for discharges of hazardous substances at and from the LPH Site.

181. LPH is jointly and severally liable for all cleanup and removal costs incurred by IES and Chemco in connection with the LPH Site.

182. If it is adjudged that any of the Plaintiffs is liable for any cleanup and removal costs incurred or to be incurred at the LPH Site, LPH is liable for its equitable share of such cleanup and removal costs.

183. Plaintiffs have expended, and will continue to expend, funds in cleaning up and removing discharges of hazardous substances at and from the LPH Site.

184. Plaintiffs have expended, and will continue to expend, more than their fair share of cleanup and removal costs at the LPH Site.

185. LPH has not reimbursed Plaintiffs for any of their cleanup and removal costs at the LPH Site, as a result of which Plaintiffs have been damaged.

WHEREFORE, IES and Chemco demand judgment against LPH:

a. Awarding Plaintiffs damages in the amount of all funds that IES has expended in cleaning up and removing discharges of hazardous substances at and from the LPH Site or, in the alternative, LPH's equitable share of all funds that Plaintiffs have expended in cleaning up and removing discharges of hazardous substances at and from the LPH Site;

b. Declaring that LPH is jointly and severally liable to Plaintiffs for funds that IES and Chemco will expended in cleaning up and removing discharges of hazardous substances at and from the LPH Site or, in the alternative for its equitable share of all funds that Plaintiffs will expend in the future in cleaning up and removing discharges of hazardous substances at and from the LPH Site, with the maximum lawfully allowable interest thereon;

c. Declaring that the Court shall retain jurisdiction to enforce the terms of the judgment; and

d. Granting Plaintiffs such other and further relief as is just and proper, including its counsel fees and costs for this action.

COUNT V
UNJUST ENRICHMENT
(ASSERTED BY ASHLAND, IES, AND CHEMCO AGAINST LPH)

186. The allegations set forth in the preceding paragraphs are hereby repeated and realleged as though set forth fully herein.

187. LPH has a duty to complete the environmental investigation and remediation of the LPH Site pursuant to the SPA, the ACO, and New Jersey state law.

188. Plaintiffs and NJDEP have demanded that LPH complete the environmental investigation and remediation of the LPH Site and otherwise comply with their obligations under the ACO and New Jersey state law, but LPH has refused to do so.

189. Plaintiffs have expended and will expend monies on investigative and remediation activities at the LPH Site.

190. LPH is responsible for the environmental investigation and remediation activities that Plaintiffs have conducted and will conduct in the future at the LPH Site pursuant to the SPA, the ACO, and New Jersey state law.

191. Plaintiffs have received no compensation, contribution, or remuneration from LPH for environmental investigation and remediation activities conducted or to be conducted, or for money expended or to be expended, and LPH unjustly has benefited and will benefit by such activities and expenditures. As a result, Plaintiffs have been and will be damaged, and LPH has been and will be unjustly enriched at Plaintiffs' expense.

WHEREFORE, Plaintiffs demand judgment against LPH:

a. Awarding damages in the amount expended by Plaintiffs, with the maximum lawfully allowable interest thereon;

b. Declaring that LPH is liable to Plaintiffs for costs of future environmental investigation and remediation efforts of the LPH Site necessary to comply with the ACO and New Jersey state law, with the maximum lawfully allowable interest thereon;

c. Declaring that the Court shall retain jurisdiction to enforce the terms of the judgment; and

d. Granting Plaintiffs such other and further relief as is just and proper, including its counsel fees and costs for this action

JURY DEMAND

Plaintiffs hereby demand a trial by jury of twelve on all issues so triable.

Respectfully submitted,

GIBBONS P.C.

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