

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

PETROLEUM UNDERGROUND
STORAGE TANK RELEASE
COMPENSATION BOARD
50 West Broad Street, Suite 1500
Columbus, Ohio 43215

Plaintiff,
vs.

STANDARD OIL COMPANY
Serving Defendant by and through its
Registered Statutory Agent:

CT Corporation System
1300 East Ninth Street
Cleveland, Ohio 44114

and

BP PRODUCTS NORTH AMERICA, INC.;
BP AMERICA, INC.; BP WEST COAST
PRODUCTS, LLC; and its predecessor and
successor companies and subsidiaries, including
but not limited to STANDARD OIL OF OHIO
(SOHIO), STANDARD OIL (Indiana), AMOCO
CORPORATION, AMOCO OIL COMPANY,
ATLANTIC RICHFIELD COMPANY (ARCO)
and BP AMOCO PLC

Serving defendants at:

4101 Winfield Road
Warrenville, Illinois 60555

and

501 Westlake Park Boulevard
Houston, Texas 77079

Defendants.

CASE NUMBER

JUDGE

COMPLAINT

(Jury Demand Endorsed Hereon)

Now comes Plaintiff, through counsel, and for its complaint against the Defendants, states and alleges as follows:

INTRODUCTION

1. Plaintiff, the Petroleum Underground Storage Tank Release Compensation Board (the “Board”) administers the Ohio Petroleum Underground Storage Tank Financial Assurance Fund (“the Fund” or “Assurance Fund”). The Board and Fund were established to ensure that there are financial resources for the costs of corrective action for accidental releases of petroleum from underground storage tank systems (hereafter referred to as “USTs”) by reimbursing owners or operators of USTs for costs associated with corrective action, where eligible. Owners or operators of USTs as “responsible persons” are required to participate in the Fund and may apply for reimbursement of corrective action costs.

2. Defendants The Standard Oil Company, BP Products North America, Inc., BP America Inc. and BP West Coast Products, LLC (hereinafter, collectively, “BP” or “the BP Defendants”) have, under the BP, Standard, SOHIO, American, Amoco, ARCO and Atlantic brands and through various predecessor companies including Standard Oil of Ohio (“SOHIO”), Amoco Corporation, and the Atlantic Richfield Company (“ARCO”), owned, operated, leased, branded, or supplied thousands of petroleum fuel dispensing facilities, primarily service stations and convenience stores, across Ohio over the last century. These service stations and convenience stores had USTs, and many of those USTs leaked or were otherwise associated with a petroleum release.

3. The Board is not an insurance company. The Board does not provide primary insurance for the costs of remediation for releases from USTs. Instead, it is a financial resource of last resort that exists to ensure that petroleum contamination resulting from the operation of USTs is remediated even when the owner or operator of the petroleum fuel dispensing facility with USTs lacks the funding and resources to pay for the cleanup. Over many years, BP’s USTs at various petroleum fuel marketing facilities in Ohio have experienced releases, and BP made claims to the Board and received monies from the Fund. However, BP also had insurance

policies through commercial, mutual and captive insurers that provided layers of insurance that covered those same releases and from which, in many instances, it also recovered insurance reimbursements.

4. The Board, in accordance with state statute and administrative rule, does not pay or reimburse remediation costs where the applicant has insurance that may cover releases from USTs or where the reimbursement of remediation costs are recoverable from any other party, including insurers. By providing reimbursement, the Board gains a subrogation right to pursue any insurance or any liable third party, and the reimbursed owner or operator may not do anything to impair that right, including entering into a settlement agreement without authorization from the Board. If the recipient of reimbursement from the Fund later makes a claim on or recovers from insurance or a third party, the recipient must indemnify the Board in full.

5. To ensure that only eligible costs are reimbursed and the Board's subrogation rights are protected, the application forms to the Board require that specific questions be answered about the availability of insurance policies; collection or intent to collect from any liable party; and settlements.

6. BP made materially false and misleading statements to the Board and concealed material information that was required to be disclosed by those participating in the Fund concerning BP's ownership of insurance, insurance claims for environmental contamination, including that resulting from the operation of USTs, insurance claim reimbursements and insurance settlements. BP did not fully disclose its complex insurance program, which included hundreds of insurance policies through commercial, mutual and captive insurers, to the Board in its applications for eligibility or in many of its claims applications for reimbursement. BP also did not advise the Board about Coverage-in-Place Agreements ("CIP Agreements"), insurance reimbursements, insurance coverage settlement agreements and monies received from commercial, mutual and captive insurers, despite the Board's right of subrogation and entitlement to indemnification.

7. BP failed to provide true and accurate disclosures and failed to protect the rights and interests of the Board. Its intentional actions resulted in shifting the cost of clean-up for petroleum releases from their USTs to the Fund. In so doing, BP has caused the Fund pecuniary loss by securing payments from the Fund that it was ineligible to receive, failing to indemnify the Board after collecting from others for the same corrective action costs and extinguishing the Board's legal rights to recoup payment from others through subrogation.

8. In response to BP's wrongful conduct, the Board brings this action to enforce the rules and regulations of the program in furtherance of its duty to maintain the financial soundness of the Fund. This action seeks to recoup all damages, including legal and equitable restitution of monies unjustly paid out of the Fund that the Board is entitled and obligated to recoup from the BP Defendants. This action is based upon BP's failure to meet its express statutory and administrative obligations, and to fulfill its contractual duties and its legal requirements to indemnify and subrogate, as well as upon BP's unlawful foreclosure of the subrogation rights of the Board, its conversion of Fund assets, and its omissions and express misrepresentations made to the Board.

THE PLAINTIFF

9. The Board is a body both corporate and politic, created by statute in 1989. O.R.C. § 3737.90. The Board has the power to sue in its own name. *Id.* The Board is charged with performing essential governmental functions for the public purposes of the state. O.R.C. § 3737.90(A).

10. The Assurance Fund, which the Board administers, was established in July, 1989 by O.R.C. § 3737.01, *et seq.* Under O.R.C. § 3737.91, the Fund is funded by underground storage tank fees, interest on those fees and revenue bonds, if any.

11. The Board was established to manage and administer the Fund. Under O.R.C. §§ 119.03 and 3737.90, the Board is charged with implementing, administering and enforcing the rules and regulations of its program and with protecting the Fund's financial resources. The Board has the power to adopt, amend, and rescind rules for the administration, operation, and

management of the Fund. The Board has established such administrative rules at O.A.C. § 3737-1-01, *et seq.*

THE DEFENDANTS AND THEIR CORPORATE HISTORY

12. BP plc is a corporation organized under the laws of England and Wales with its principal offices at One St. James Square in London, England. BP Holdings North America Limited is a corporation organized under the laws of England and Wales with its principal offices in England. In December 2006, BP plc transferred all of its stock, assets and holdings in BP America Inc. to BP Holdings North America Limited. BP plc is the owner of all of the stock, assets and holdings of BP Holdings North America Limited. BP plc is the parent corporation for BP Holdings North America Limited and BP America Inc.

13. Defendant BP America Inc. is a corporation organized under the laws of the State of Delaware with its principal offices at 501 Westlake Park Boulevard in Houston, Texas 77079. BP America Inc. was incorporated in the State of Delaware on July 19, 1974. BP America Inc. was first authorized to do business in the State of Ohio on September 11, 1987 (Ohio License No. 708766). Defendant BP America Inc. owns and controls all of the stock, assets and holdings of BP's North American companies.

14. The Standard Oil Company was incorporated as a for-profit entity (Ohio License No. 3675) in Ohio on January 10, 1870. Its principal place of business is registered as Cuyahoga County. The Standard Oil Company has maintained its continuous existence as an Ohio-based company to the present day. In 1969, BP plc began to purchase a large stock interest in the Standard Oil Company, thereby acquiring a majority interest in 1978. In 1987, BP plc through BP America Inc. acquired all the remaining stock of the Standard Oil Company and made it the cornerstone of its United States operations. The Standard Oil Company is fully owned by BP America Inc. From 1913, Defendant Standard Oil Company has owned, operated, leased and supplied petroleum fuel dispensing facilities (i.e. service stations) throughout the State of Ohio using the Standard, SOHIO and BP trade names and trademarks.

15. The Standard Oil Company of Indiana was first incorporated in Indiana in 1889. In 1923, Standard Oil (Indiana) acquired a controlling interest in the American Oil Company, a Maryland corporation. On April 29, 1927, the American Oil Company began operations in the State of Ohio (Ohio License No. 126419). On January 9, 1961, The American Oil Company changed its name to the Amoco Oil Company. In 1985, Standard Oil (Indiana) changed its name to the Amoco Corporation. On September 28, 2001, the Amoco Oil Company, a Maryland corporation having its principal place of business in Illinois, changed its name to BP Products North America Inc. From 1927, the American Oil Company, the Amoco Oil Company and Defendant BP Products North America Inc. have owned, operated, leased and supplied petroleum fuel dispensing facilities (i.e. service stations) throughout the state of Ohio using the American, Amoco and BP trade names and trademarks. Defendant BP Products North America Inc. is a subsidiary of BP America Inc. that manages, owns and operates many of the refining and retail marketing assets of BP America Inc. in the United States.

16. The Atlantic Refining Company, a Pennsylvania corporation was first licensed to do business in Ohio on July 27, 1917 (Ohio License No. 49062). On May 16, 1966, the Atlantic Richfield Company began operating in Ohio after the merger of the Atlantic Refining Company with the Richfield Oil Company. The Atlantic Richfield Company ceased operations in Ohio when its license was cancelled on June 5, 1985. From 1917 until 1985, the Atlantic Richfield Company (ARCO) owned, operated, leased and supplied petroleum fuel dispensing facilities (i.e. service stations) throughout the State of Ohio using the Atlantic and ARCO trade names and trademarks. Currently, Defendant BP West Coast Products LLC is a subsidiary of BP Products North America Inc., which owns, operates and supplies the former ARCO petroleum fuel dispensing facilities throughout the United States.

17. In 1998, BP plc merged with the Amoco Corporation to form BP Amoco plc. In 1999, BP Amoco was required by the FTC to divest some of its service stations and convenience stores in the state of Ohio.

18. In 1999, BP Amoco plc merged with the Atlantic Richfield Company (ARCO). In 2000, BP Amoco plc changed its name back to BP plc.

19. As the result of the numerous mergers and acquisitions by BP in the United States, BP plc through its U.S. subsidiaries, Defendants BP America Inc., BP West Coast Products, LLC and BP Products North America Inc. and its predecessor companies and subsidiaries owned, operated and supplied petroleum marketing facilities that distributed and sold petroleum fuels throughout the State of Ohio. Its Ohio fuel stations were known historically by the BP, Standard, SOHIO, American, Amoco, ARCO and Atlantic brands.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action because it consists of general causes of action under the laws of Ohio and satisfies O.R.C. § 2305.01. The BP Defendants conduct business in Ohio, are citizens of Ohio and/or have engaged in conduct that has had a substantial impact in Ohio. Furthermore, Defendant Standard Oil Co. is a citizen of the state of Ohio.

21. Venue is proper in this Court because the BP Defendants owned, operated, and leased USTs at petroleum fuel dispensing facilities located in Franklin County, submitted claims to the Board, and received monies from the Fund for corrective action costs associated with accidental petroleum releases from USTs located in Franklin County.

FACTS

The BP Service Station Footprint in Ohio and its Divestment Plan to Shift Environmental Costs of Corrective Action

22. BP, through mergers and acquisitions by which it succeeded to the assets and liability of its predecessors, had a historic presence in Ohio encompassing thousands of owned, operated, leased, branded, or supplied service stations and convenience stores with USTs with operations beginning in 1913 and continuing through the present day.

23. BP acquired a stake in SOHIO in 1968 and assumed majority ownership in 1978. SOHIO is BP's oldest legacy service station presence in Ohio, dating to 1913, and it had the largest footprint, with as many as 3,800 branded service stations and convenience stores, and

30% of the market in the 1960s. SOHIO maintained more than 1,000 branded service stations and convenience stores into the 1990s.

24. BP merged with Amoco Corporation in 1998. Amoco had a significant Ohio presence, with a peak of more than 570 owned, operated, leased, branded, or supplied service stations and convenience stores, with a reduced but ongoing presence through the 1998 merger.

25. BP acquired Atlantic Richfield Co. (“ARCO”) in 2000. ARCO’s peak footprint in Ohio exceeded 1,000 owned, operated, leased, branded, or supplied service stations in the early 1970s. ARCO exited the Ohio market in the early 1980s.

26. BP’s owned, operated, leased, or supplied service stations in Ohio that had USTs for the storage of petroleum products, primarily gasoline. A UST is one or any combination of tanks, including the underground pipes connected thereto, that are used to contain an accumulation of regulated substances the volume of which, including the volume of the underground pipes connected thereto, is 10% or more beneath the surface of the ground. O.R.C. §3737.87. Regulated substances include petroleum. O.R.C. §3737.87 at (J), (L).

27. In many cases, BP owned the USTs, and sometimes leased the USTs to dealer and jobber supplied petroleum fuel dispensing facilities.

28. USTs frequently leak, and there is no dispute that USTs at sites owned, operated, leased, branded, or supplied by BP released petroleum into soil and groundwater in Ohio. As an example, the Board has received applications for eligibility to claim against the Fund for **363** or more former BP petroleum fuel dispensing facilities with petroleum releases.

29. Virtually all of the USTs installed at these service stations and convenience stores were steel tanks with steel pipes. The majority of these USTs experienced releases.

30. It has long been known that corrosive soil was a substantial cause of UST leakage, as reflected in a 1941 report from the National Fire Protection Association titled “Leakage from Underground Gasoline Tanks.”

31. In a leak rate study from 1965 involving a group of 800 USTs in Ohio, there was at least one tank failure in 55% of the stations within 15 years of installation, primarily due to corrosion.

32. In the April 1966 edition of the National Petroleum News, BP predecessor SOHIO estimated that the average tank life without corrosion protection was ten years. Few USTs had cathodic protection to protect against steel corrosion.

33. In 1978, the American Petroleum Institute (“API”), in which BP and its predecessors are or were members, conducted a study of tank leaks. The study concluded that the majority of leaks (54%) occurred in tanks 11 to 15 years old. About 16% of the leaks occurred in tanks six to ten years old.

34. At an API tank leakage meeting in 1982, a tank leakage panel concluded that many tanks installed in the 1950s and 1960s were ready to fail. In 1982, at a Society of Independent Gasoline Marketers conference, underground tank leaks were likened to an “industrial cancer.”

35. By 1982, both BP predecessors Amoco and ARCO instituted a requirement that dealers and jobbers conduct regular inventory reconciliations.

36. In 1986, the EPA published a report entitled “Summary of State Reports on Releases from Underground Storage Tanks.” The EPA report concluded that the mean age for tank failure was 18 years in Ohio.

37. Starting in the mid-1980s, both the federal and state governments enacted regulations that required substantial upgrades and replacements of USTs. These regulations would have required BP to spend millions of dollars on USTs upgrades and replacements. One offshoot of these regulations was the creation of the Board and Fund.

38. Facing this liability, BP began in the 1980s a program of divestment of USTs at petroleum fuel dispensing facilities, primarily service stations and convenience stores, as reflected in the declining number of owned, operated, leased, or supplied service stations in Ohio.

39. BP transferred the operation and ownership of many of its service stations to dealers but continued to profit from these sites because it continued to own the real property and equipment and to operate the fuel dispensing business through dealers, lessees, and jobbers (collectively, “dealers”), with whom it entered into long-term petroleum supply and branding contracts.

40. As a result of this divestiture program, BP saved hundreds of millions of dollars it otherwise would have spent upgrading its gasoline stations and convenience stores across the state and remediating petroleum contamination at its facilities. However, this plan violated O.R.C. § 3737.89(D), which provides that no indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer liability for releases from tanks from the “responsible party” to another party. Thus, BP was prohibited from attempting to transfer responsibility for environmental pollution from itself to dealers or other buyers and BP remains the “responsible person” for the releases.

The Board, the Fund, and the Reimbursement Application Process

41. Ohio recognized the environmental implications associated with releases from USTs and responded by establishing the Board and Fund effective July 11, 1989.

42. The Board serves to “preserve and protect the water resources of the state . . . , to assist in the financing of repair and replacement of petroleum underground storage tanks and to improve property damaged by any petroleum releases from those tanks.” O.R.C. § 3737.94(A).

43. The Board achieves these goals through the operations of the Fund. The Board has the authority to adopt, amend, or rescind such rules as are necessary or appropriate to implement. O.R.C. §§ 3737.90-98.

44. Subject to a deductible, the Board authorizes payments from the Fund to responsible persons (owners or operators of a UST system, pursuant to O.R.C. §3737.87(N)), for eligible corrective action costs and compensation of third parties for bodily injury or property damage caused by accidental UST releases. O.R.C. § 3737.92.

45. There are numerous eligibility requirements that must be satisfied before Fund reimbursement may be granted, including that at the time the release “was first suspected or confirmed, a responsible person possessed a valid certificate of coverage issued by the Board,” that the USTs were operated in compliance with various fire marshal registration and operation requirements, and that a responsible person demonstrated financial responsibility for the deductible amount of coverage with the Fund. O.R.C. § 3737.92.

**The Fund is a Payor of Last Resort and Does Not Reimburse
for Costs Covered by Insurance**

46. In creating the Fund, the legislature adopted a strong public policy in favor of preserving the continued financial viability of the Fund, as the Fund has limited financial resources. O.R.C. § 3737.91. The statutory framework makes the Fund the payor of last resort, and entitles the Board to rights of indemnification and subrogation to recover monies for the Fund.

47. The Board, through its statutorily authorized authority, has promulgated regulations governing the eligibility of costs for reimbursement. O.A.C. §3737-1-07.

48. Eligible tank owners who submit proper claim applications for a release may receive monies from the Fund for the costs to undertake corrective actions to clean up the release (“corrective action costs”) as well as monies to reimburse third-parties who were damaged by the release and made claims against the tank owner (“third-party claims”). The Bureau of Underground Storage Tank Regulations (“BUSTR”), a bureau of the State Fire Marshal, regulates the corrective action to be undertaken.

49. Importantly, the Board does not authorize reimbursement for “[c]osts covered by insurance policies or recoverable from any other party.” O.A.C. § 3737-1-09(A) (8).

50. In order to be eligible to receive reimbursement from the Fund, tank owners, like BP, must submit an eligibility application to the Board in which any insurance that may cover releases must be disclosed. Once granted eligibility to claim against the Fund for a particular release, the tank owner must submit a claim application for that release in order to receive

monies from the Fund for corrective action costs or third-party claims. On each individual claim application related to the release, the tank owner must again disclose any insurance or other source of recovery, and the failure to do so renders the tank owner ineligible to receive monies from the Fund for that release.

51. The eligibility and claim application forms, which have evolved over time, ask, among other things, whether or not there is insurance coverage, other than for the Fund deductible, against which a responsible person has made or could make a claim for reimbursement; whether any lawsuit has been filed to recover the corrective action costs; whether or not the owner or operator has or intends to collect money from any other source for the corrective action costs; and whether or not the release is the subject of a settlement agreement.

52. The Board, upon payment or reimbursement from the Fund to a responsible person, is entitled by subrogation to all rights of the responsible person to recover those costs from any other person. O.R.C. § 3737.92(I); O.A.C. § 3737-1-09.

53. This includes the right to recover costs from a responsible person's insurer, any other party, and any other party's insurer. O.A.C. § 3737-1-22(D).¹

54. The responsible person shall not do any act that will impair the Board's subrogation rights, including entering into any settlement agreement without prior notice to and authorization by the Board. O.A.C. § 3737-1-22(B).

55. If the responsible person does recover from insurance or a third party any costs reimbursed from the Fund, the responsible person shall indemnify the Board for the total cost paid from the Fund to the responsible person unless the Board agrees in writing to a lesser amount. O.A.C. § 3737-1-22(G).

¹ The effective date of this rule is 07/01/2003. The rule memorialized an existing right established by O.R.C. 3737.92(I) originally effective 07/11/1989.

56. The Board requires the use of the application forms and the applicant must certify that the answers on the applications are true and correct. O.A.C. § 3737-1-12(I) (1).

**BP Applies to the Board, Denies Having Insurance Coverage,
Denies Seeking or Recovering Money from any Other Source,
and is Reimbursed from the Fund**

57. As of the date of the filing of this Complaint, BP has submitted 770 eligibility applications to the Board for eligibility to claim against the Fund for various sites and has submitted 2,651 claim applications to the Board for reimbursement from the Fund for specific releases at these Ohio sites.

58. As of the date of the filing of this Complaint, the Board has reimbursed BP \$33,360,455.61 for corrective action costs submitted in these claim applications. An additional 905 claim applications with a value of approximately \$22,281,926.28 are pending review and settlement. The list of these claims is too voluminous to attach, however, it is within the possession and control of the BP Defendant. BP continues to submit new claim applications to the Board for the reimbursement of corrective action costs incurred to clean up the releases for which eligibility was previously granted.

59. On each and every application BP submitted, BP answered “No” to any and all questions asking about the availability of insurance coverage upon which a claim could be made for corrective action costs or third party damages resulting from the release that is the subject of the application.

60. On each and every application BP submitted, BP answered “No” to any and all questions asking whether BP had collected or intended to collect money from another source for the costs of performing corrective action or for third party damages resulting from the release that is the subject of the application.

61. On each and every application BP submitted, BP answered “No” to any and all questions asking whether BP had filed an insurance claim or a lawsuit or reached a settlement relating to the release that is the subject of the application.

62. BP did not otherwise fully disclose to the Board true and accurate information that there was insurance coverage, other than for the Fund deductible, against which BP had made or could make a claim for reimbursement; that BP had or intended to collect money from any other source for the corrective action costs; and that the release was the subject of a lawsuit or a settlement agreement.

BP's Insurance Profile and Insurance Settlements

63. Dating back to at least the 1950s, hundreds of insurance companies issued thousands of insurance policies to BP through its complex multi-layer insurance program.

64. These policies include primary, umbrella, and excess commercial general liability (“CGL”) policies, pollution liability policies, all risk policies, garage liability policies, and others.

65. BP had insurance from its wholly owned captive insurers including Jupiter Insurance Ltd, Cairngorm Insurance Limited (BP), Greater Pacific Limited (ARCO), Jupiter Assurance Ltd, Northern Resources Insurance Company Ltd, and Northern Resources Assurance Inc. All of these captive insurers were amalgamated into Jupiter Insurance Ltd between 2000 and 2012. On March 25, 2011, BP incorporated a new captive insurer, Saturn Insurance Inc. in Vermont. These captive insurers received credit ratings from ratings agencies and BP treated captive insurance as real insurance in IRS filings by, for example, deducting premiums.

66. From 1971 to 2004, BP was a partial owner in and insured, along with other major oil companies, by a mutual-liability insurer known as Oil Insurance Limited (Bermuda) and its related excess carrier, Oil Casualty Insurance Limited (Bermuda), which provided pollution liability coverage for BP's petroleum dispensing facilities, including service stations and convenience stores.

67. Consistent with the practice of other major oil companies, BP likely was a named insured on its dealers' and jobbers' insurance policies. These policies provided coverage for the investigation and remediation of releases from USTs in Ohio.

68. In the 1990s, BP made claims and initiated settlement talks with many of its insurers to resolve environmental liabilities expressly including UST liability as part of the overall marketing system (service station) liability. BP's settlement demands precisely quantified future marketing system liability and identified this liability, expressly including USTs, as the largest component of BP's settlement demands.

69. BP's settlement demands were successful. BP reached dozens of settlements with an insurance recovery of millions of dollars.

70. In exchange for millions of dollars, BP released many of its insurers from all environmental liabilities, including those resulting from the operation of petroleum USTs, both existing and future. These releases covered many types of policies, including all varieties of insurance policies issued over decades extending to the time of settlement. By releasing many of its insurers, BP destroyed the Board's subrogation right to pursue a recovery from the insurers.

71. BP never fully and properly disclosed to the Board, nor did BP provide truthful and accurate information to the Board about its complex multi-layer insurance program, its claims made on many of its insurers, its settlement of many of those claims through monetary settlements or CIP Agreements, its release of environmental liabilities, including those resulting from the operation of USTs, or its receipt of millions of dollars in exchange for those releases.

72. BP never indemnified the Board for the total cost, or any cost, paid by the Fund to BP.

The Board Paid Subsequent Owners of BP USTs to Remediate BP USTs Contamination

73. Thousands of historic BP owned, operated, leased, branded, or supplied service stations and convenience stores transitioned to new ownership as BP altered and later reduced its footprint in Ohio.

74. Just like the UST sites that remained in BP's possession, the divested petroleum fuel dispensing facilities with USTs suffered petroleum releases into the environment. Under

Ohio law, BP is responsible for all petroleum releases from its USTs during the time the company owned, operated, or leased the USTs.

75. Subsequent owners of these BP USTs have submitted claim applications to the Board and have been reimbursed from the Fund. As of the date of filing, the Board has identified **76** former BP petroleum fuel dispensing facilities where the subsequent owners have been paid a total of \$7,155,273.00.

76. Upon information and belief, there remain former BP petroleum fuel dispensing facilities, primarily service stations and convenience stores, for which no claims on the Fund have yet been made by either BP or a subsequent owner. Many of these sites have suffered petroleum releases from USTs for which BP was responsible, as owner, operator, or lessee. Claims will eventually be submitted to the Board for these facilities.

BP's Unlawful Conduct Violates Ohio's Statutory and Administrative Codes

77. At all times relevant, BP was ineligible to submit claims to the Board for reimbursement of corrective action costs from the Fund because it maintained insurance that covered such costs. BP was, in fact, paid under these policies on claims that included liability costs for USTs. BP violated O.R.C. § 3737.92(B) and O.A.C. § 3737-1-09.

78. BP was also ineligible for reimbursement from the Fund as it falsified its attestation contained in its application for Fund eligibility pursuant to O.R.C. § 3737.92.

79. BP unjustly received reimbursement for corrective action costs from the Fund that were covered by insurance policies or were recoverable from numerous parties, including BP's insurers, all in violation of O.A.C. §3737-1-09 and O.R.C. §3737.92.

80. BP violated its statutory duty by failing to protect the Board's subrogation rights and to indemnify the Board for all costs recovered from any other party pursuant to O.R.C. § 3737.92(I).

81. BP's conduct violates O.R.C. § 3737.90, O.R.C. § 3737.92, and O.A.C. § 3737-1-01, *et seq.*, and has caused, and continues to cause, injury and damage to the Board and the Fund.

82. BP made false statements, misrepresentations, and omissions and concealed material facts in its applications to the Board, making BP ineligible for reimbursement. BP thus violated of O.R.C. § 3737.92(D)(5) and O.A.C. § 3737-1-19(A), as follows:

- (a) Inaccurately certifying in its applications to the Board that it had no applicable insurance coverage;
- (b) Concealing the existence of pending insurance claims, insurance claims reimbursements and insurance coverage settlements and reimbursements on the exact same sites for which it had submitted, or intended in the future to submit, claims for reimbursement to the Board;
- (c) Concealing the receipt of insurance proceeds for corrective action and environmental remediation costs on the exact same sites for which it had submitted, or intended in the future to submit, claims for reimbursement to the Board;
- (d) Entering into insurance coverage agreements and executing releases with its own insurance companies, in exchange for a CIP Agreement or lump-sum payment;
- (e) Concealing pollution liability coverage through Oil Insurance Limited , a mutual insurance company in which BP and its predecessor companies and subsidiaries were shareholders;
- (f) Concealing that BP and its predecessor companies and subsidiaries wholly owned captive insurers that provided pollution liability coverage and in some circumstances, provided insurance reimbursements;
- (g) Concealing that BP and its predecessor companies and subsidiaries held dealer and/or jobber insurance policies in which BP was named as an “Additional Insured”;
- (h) Concealing its complex multi-layer insurance program with hundreds of insurance policies, which potentially covered BP and its predecessor companies and subsidiaries for its pollution liabilities;

(i) Conducting other such activities and misconduct in connection with its applications to the Board and its receipt of reimbursements from the Fund.

83. The Board was unaware from BP's actions, inactions, and omissions that the BP Defendants were ineligible for reimbursement from the Fund. The Board, in accordance with its rules and regulations may seek recovery of payments made to reimbursement applicants, such as BP, based upon the falsification or misrepresentation of data or information contained in any documentation submitted to the Board. O.R.C. § 37.37.92(D) and O.A.C. § 3737-1-19(A).

84. BP made false statements, misrepresentations and omitted material facts in its applications and provided false, inaccurate or incorrect data and information to the Board in order to be eligible for reimbursement from the Fund.

85. BP knowingly and intentionally concealed the existence of its complex multi-layer insurance program and the nature and extent of its coverage, so that it would remain eligible to collect claim monies from both the Board and its insurance.

86. BP did, in fact, pursue payment for environmental site investigation and clean-up from many of its insurance companies and from the Board.

87. BP knowingly concealed from the Board that it received reimbursements from insurance for which it also claimed reimbursement from the Fund.

88. BP's conduct including, but not limited to, its knowing and intended falsification of its applications to the Board and its having received both insurance proceeds and Fund reimbursements, as previously set forth herein, violates Ohio law and renders BP ineligible for reimbursement from the Fund.

89. As the result of BP's action, inactions, omissions, and wrongful conduct, the Board has suffered injury and damage and is entitled to pursue reimbursement for all disbursements made from the Fund to BP.

COUNT I
SUBROGATION

90. Plaintiff incorporates each and every paragraph herein, as if fully rewritten in this and in each count of this Complaint.

91. When the Board reimbursed the BP Defendants and any of their successor owners and operators of petroleum fuel dispensing facilities for corrective action costs related to releases of petroleum from USTs, the Board became entitled to all rights of those parties to recover against BP and BP's insurers. Under Ohio law, BP is legally responsible for the releases that occurred while it was the owner, operator, or lessee of the USTs at Oho petroleum fuel dispensing facilities. These subrogation rights arise from any of four sources of law: (1) statutory subrogation under O.R.C. § 3737.92; (2) subrogation by regulation under O.A.C. §3737-1-09 and O.A.C. §3737-1-22; (3) conventional subrogation pursuant to the contract between the Board and BP; and (4) legal or equitable subrogation under common law, because the Board paid a debt owed by BP when BP failed to fulfill its responsibility to conduct corrective action.

92. Under O.R.C. § 3737.89(D), no indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer liability for releases from USTs from the responsible person to another person. BP is prohibited from transferring responsibility for petroleum releases from its USTs at its formerly owned, operated, or leased service stations or convenience stores to subsequent purchasers under the purchase and sale agreements used in its divestiture programs.

93. BP recovered from its insurers for the liability associated with petroleum releases from its USTs at divested petroleum fuel dispensing facilities for which subsequent owners and operators filed applications and were reimbursed from the Fund.

94. The Board is entitled to be repaid by the BP Defendants for reimbursement payments made from the Fund to subsequent owners and operators of BP sites for the costs of

corrective action related to petroleum releases for which BP is responsible, plus statutory interest pursuant to O.R.C. §1343.03.

COUNT II
INDEMNIFICATION

95. Plaintiff incorporates each and every paragraph herein, as if fully rewritten in this and in each count of this Complaint.

96. The BP Defendants received money from insurance for environmental liabilities, including corrective action costs which were also reimbursed from the Fund.

97. The Board is entitled to a right of indemnification against the BP Defendants arising from any one of two different sources of law: (a) indemnification by administrative regulation under O.A.C. 3737-1-22(G); and (b) contractual indemnification pursuant to the express and/or implied contracts between the Board and the BP Defendants.

98. BP must indemnify the Board for the total cost paid by the Board to BP from the Fund, plus interest pursuant to O.R.C. § 1343.03.

COUNT III
BREACH OF CONTRACT

99. Plaintiff incorporates each and every paragraph herein, as if fully rewritten in this and in each count of this complaint.

100. The Board and the BP Defendants entered into contracts. The terms of these contracts were supplied by any one of two sources of law: (a) express agreements by the Parties; and (b) the statutory and regulatory regime governing the Board, the Fund, and responsible persons, including the BP Defendants. The contracts which form the express agreement of the parties are contained in the applications submitted to the Board by the BP Defendants. They are too numerous to attach hereto and are within the custody and control of the BP Defendants.

101. The material terms of these contracts included the following: (a) that in exchange for reimbursement from the Fund, the BP Defendants would disclose to the Board any insurance coverage; (b) the BP Defendants would not make claims to the Board or receive money from the Fund if the petroleum release giving rise to the claim was subject to insurance coverage; (c) the BP Defendants would reimburse or indemnify the Board for any money received from an insurer arising from a petroleum release for which the Board authorized payment to the BP Defendants from the Fund; and (d) the BP Defendants would protect the subrogation rights of the Board against any insurer.

102. The BP Defendants breached these material terms by failing to disclose to the Board the existence of insurance coverage, making claims to the Board and receiving money from the Fund for releases which were subject to insurance coverage, failing to reimburse or indemnify the Board for money received from an insurer for a release for which the Board had authorized payment from the Fund, and failing to protect the subrogation rights of the Board against insurers.

103. As a direct and proximate result of the BP Defendants' breach of contract, the Board has lost the benefit of its bargain and has suffered cognizable damage, including, but not limited to, the money paid to the BP Defendants from the Fund for those petroleum releases for which BP was ineligible for Fund reimbursement. The Board is entitled to recover these funds in total, with statutory interest pursuant to O.R.C. § 1343.03.

COUNT IV

QUASI-CONTRACT (UNJUST ENRICHMENT)

104. Plaintiff incorporates each and every paragraph herein, as if fully rewritten in this and in each count of this complaint. This cause of action is pled in the alternative to the Third Cause of Action pursuant to Civil Rule 8(E) (2).

105. In the absence of a contractual agreement between the Parties, liability in quasi-contract arises out of the obligation cast by law upon the BP Defendants who received benefits from the Fund, which were paid based upon the provisions set forth in O.R.C. §3737.90, *et seq.* and O.A.C. §3737-1-01, *et seq.* and the agreement to meet statutory and administrative code provisions required for reimbursement from the Fund, which the BP Defendants are not justly entitled to retain.

106. The Board made payments from the Fund to the BP Defendants when BP was not entitled to receive such money as a result of its ineligibility or tortious conduct.

107. The BP Defendants knew they received the benefits from the Board.

108. The BP Defendants retained the benefits from the Board under circumstances where it would be unjust to do so without restitution, including statutory interest pursuant to O.R.C. § 1343.03.

COUNT V

NEGLIGENT MISREPRESENTATION

109. Plaintiff incorporates each and every paragraph herein, as if fully rewritten in this and in each count of this complaint.

110. As set forth in detail above, BP provided false information and concealed information and thus misrepresented the scope of BP's insurance coverage, whether BP had

collected or intended to collect for the relevant USTs releases from another source, and whether BP had settled claims for the USTs releases.

111. BP exercised far less than reasonable care when making these misrepresentations. BP simultaneously possessed documentation of the scope of insurance coverage, had collected or was pursuing collection from insurers, or had settled and released the USTs claims for value.

112. BP did so in the course of its business, with the pecuniary interest of recovering reimbursements from the Fund for corrective action costs related to the releases of petroleum from its USTs.

113. BP supplied the information and made the misrepresentations to the Board for the express purpose of guiding the Board in determining what costs, if any, to reimburse.

114. The Board justifiably relied on BP's statements and disclosures because BP had an obligation by regulation, which was repeated on the application forms, to provide true and accurate information and to certify the truth of the same where required.

115. The Board was injured because if BP had provided true and accurate information, the Board could not have reimbursed BP.

116. Because BP's conduct was in violation of Ohio law and regulation, specifically the obligation to disclose established by O.R.C. § 3737.92; O.A.C. § 3737-1-09; O.A.C. § 3737-1-12; and O.A.C. § 3737-1-22, BP's misrepresentations and concealment constitute negligence per se.

117. BP negligently misrepresented, concealed, and omitted information from the Board to remain eligible for reimbursements from the Fund for its corrective action costs and to prevent the Board from investigating and pursuing its statutory and equitable subrogation rights.

118. BP intended, or had reason to expect, that the Board would act upon its negligent misrepresentations and reimburse BP from the Fund.

119. The Board justifiably relied upon the BP Defendant's negligent misrepresentations to the Board's detriment by reimbursing the BP Defendants from the Fund when the BP Defendants were not entitled to such reimbursements because of their violation of the Board's statutes and rules.

120. Based upon the negligent misrepresentation of material facts as set forth above, the Board was harmed and is entitled to recover all monies paid to the BP Defendants and subsequent owners of the BP Defendants' divested release sites for the costs of necessary corrective action taken at service stations and convenience stores as well as impacted adjacent properties in Ohio.

COUNT VI

CONVERSION

121. Plaintiff incorporates each and every paragraph herein, as if fully rewritten in this and in each count of this Complaint.

122. The BP Defendants wrongfully assumed control over monies of the Fund to which they were not entitled to receive, and continues to control those monies to date.

123. The Board is entitled to replevin of all money over which the BP Defendants wrongfully assumed control, as well as statutory interest pursuant to O.R.C. § 1343.03.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in favor of Plaintiff and against the BP Defendants for the following damages in an amount in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for compensatory damages, in addition to:

A. Compensatory damages equal to the amount of money disbursed by the Fund to the BP Defendants while they were in violation of O.R.C. § 3737.90, and O.A.C. § 3737-1-01, *et seq.*;

B. Compensatory damages equal to the amount of money disbursed to the BP Defendants from the Fund to which the principles of statutory and equitable subrogation apply;

C. Compensatory damages equal to the amount of money disbursed to the BP Defendants from the Fund, in cases where the Board was prevented from exercising its statutory right to pursue insurance coverage claims and litigation against the BP Defendants' insurers and reimbursement from the BP Defendants as a result of its insurance coverage settlements;

D. Compensatory damages equal to the amount of money disbursed to the BP Defendants from the Fund resulted from BP's negligent misrepresentation;

E. Restitution and disgorgement of all monies disbursed to the BP Defendants from the Fund that resulted from the BP Defendants having been unjustly enriched;

F. Compensatory damages equal to the amount of money disbursed to eligible subsequent owners from the Fund resulting from corrective action for petroleum releases at the BP Defendants' formerly owned, operated, and leased service stations and convenience stores in Ohio, to which the Board is entitled to statutory and equitable subrogation;

G. Compensatory damages equal to the amount of compensation paid from the Fund to third parties for bodily injury and property damage resulting from releases of petroleum from USTs at the BP Defendants' formerly owned, operated, and leased service stations and convenience stores in Ohio, to which the Board is entitled to statutory and equitable subrogation; and

H. Any and all other relief including injunctions to which the Board may be entitled to at law or in equity.

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,

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INSTRUCTIONS FOR SERVICE

TO THE CLERK: PLEASE SERVE EACH DEFENDANT BY CERTIFIED MAIL AT THE ADDRESSES SET FORTH IN THE CAPTION