SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-003317-24T2

HONEYWELL INTERNATIONAL INC. PLAINTIFF/RESPONDENT -v- SATEC, INC., SATEC REAL ESTATE HOLDING, LLC DEENDANTS/APPELLANTS	CIVIL ACTION ON APPEAL FROM ORDER ENTERED MAY 13, 2025 BY THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, UNION COUNTY C-000014-25 Sat Below: Hon. Robert J. Mega, P.J.Ch.

BRIEF ON BEHALF OF APPELLANTS, SATEC, INC. and SATEC REAL ESTATE HOLDING, LLC

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TABLE OF CONTENTS

TABLE OF JUDGMENTS/ORDERS

TABLE OF AUTHORITIES

Cases **Pages**

Statutes

Administrative Codes

Court Rules

Treatises - None

APPENDIX TABLE OF CONTENTS

VOLUME I (Aa 1 – Aa 161)

PRELIMINARY STATEMENT

This matter involves the scope of contractual arbitration provisions that formed part of a written settlement agreement. The settlement agreement, dated January 6, 2009, resolved environmental litigation commenced in 2005 and sets forth the rights and obligations of Respondent, Honeywell International, Inc. ("Honeywell") and Appellants, SATEC, Inc. and SATEC Real Estate Holding, LLC (collectively, "SATEC"). Honeywell and SATEC would submit conflicts concerning the parties' rights and obligations under the settlement agreement to mediation and, if not resolved by that process, to binding arbitration before the parties' agreed-upon arbitrator.

Honeywell, as the party remediating SATEC's property, was charged to prepare one or more reasonable proposals for environmental remediation - "with the advice and consent of SATEC" - and to submit same to NJDEP for environmental remediation of both soils and groundwater at SATEC's property. SATEC asserts that Honeywell breached its various contractual obligations under the Settlement Agreement as, sixteen (16) years after the execution of the settlement agreement, SATEC's property is still saddled with soils and groundwater contamination.

The settlement agreement provide for SATEC's right to arbitrate four (4) distinct areas of contractual disputes. The first arbitrable dispute ("AD #1") involves so-called "Approved Costs of Remediation" under §2.4 of the settlement agreement, which provides that:

> "Disputes Concerning Approved Costs of Remediation: In the event of any dispute between the Parties over whether any costs or expenses constitute Approved Costs of Remediation, the Parties shall promptly confer in an effort to resolve their differences. If the Parties are unable to resolve any dispute following a reasonable opportunity for joint consultation, then any and every question, dispute, claim or controversy concerning whether any costs or expenses constitute Approved Costs of Remediation shall be finally and non-appealably resolved solely by retired New Jersey Superior Court Judge Mark Epstein." (emphasis added).

Settlement agreement §3.2 provides the second area of arbitrable dispute ("AD #2"):

> "Until the Approved Costs of Remediation exceed $2,000,000 Honeywell shall obtain the consent of SATEC concerning the manner in which the remediation shall be performed. SATEC shall not unreasonably withhold its consent, subject, nevertheless, to the Parties' rights to arbitrate disputes **pursuant to the arbitration process set forth in Section 2.4.**"

Section 3.2 of the settlement agreement also identifies the third arbitrable dispute ("AD #3") as:

> "Once the Approved Costs of Remediation exceed $2,000,000 (and SATEC is no longer obligated to contribute), Honeywell shall have sole discretion (subject, nevertheless, to a reasonableness standard, **the Parties' rights to arbitrate as hereinbefore set forth** and Honeywell's express obligations and undertakings pursuant to this Agreement) regarding the manner in which it shall complete any remediation."

Finally, settlement agreement §3.3 provides for arbitrable dispute number four ("AD #4"):

> Honeywell shall act, at all times, in a reasonable manner, and shall keep SATEC informed of all remediation activities, provide advance notice of any meetings with NJDEP or other governmental authorities relating to remediation of the Property, and afford SATEC an reasonable opportunity to participate in such meetings.

The record before the Trial Court is clear: Honeywell did not keep SATEC informed of and allow SATEC to participate in any NJDEP meetings or submissions; nor did Honeywell undertake any environmental remediation at the SATEC property until 2016 (seven (7) years after the settlement agreement was executed). And, in 2016, Honeywell did not excavate any soils, but instead undertook only certain groundwater injections. From that point in time to the end of 2022, no other remediation activities (particularly, no contaminated soils removal) were undertaken by Honeywell.

SATEC asserted before the Trial Court that Honeywell was in breach of the settlement agreement; and SATEC demanded arbitration of the above four (4) areas of dispute. The Trial Court initially, on April 4, 2025, agreed with SATEC as to the four (4) arbitrable areas of dispute; but later, on May 13, 2025, reduced the areas of arbitration to one: Approved Costs of Remediation. SATEC submits that the "reversal" by the Trial Court was (a) *sua sponte* and untimely and (b) against the plain language of the parties' negotiated settlement agreement. SATEC therefore seeks reversal of the Trial Court's May 13, 2025 Decision and Order, and reinstatement of the four (4) arbitrable areas of dispute contained in the Settlement Agreement, as confirmed by the Trial Court's April 4, 2025 Decision and Order.

PROCEDURAL HISTORY

On February 3, 2025, Honeywell filed a one count complaint herein, seeking summary relief pursuant to R.4:67, for access to SATEC's Property, located at 10 Milltown Court in Union Township, New Jersey. Aa 107. Honeywell sought to undertake environmental remediation activities (both "environmental testing" and "soils and groundwater injections"), in purported conformity with the Parties' 2009 settlement agreement (the "Settlement Agreement"). Aa 1.

SATEC cross-moved for an order directing that issues beyond mere access to SATEC's Property for "environmental testing" be transferred to binding arbitration before the parties' designated arbitrator, Ret. Superior Court Judge Mark Epstein (the "Arbitrator" or "Judge Epstein"). SATEC objected to Honeywell's proposed "soils and groundwater injections," Aa 122, and asserted there were four (4) arbitrable areas of dispute:

1. Approved Costs of Remediation;
2. SATEC's right to "advice and consent" with respect to Honeywell's submissions to NJDEP;
3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed); and
4. The reasonableness of Honeywell's proposed remediation strategy.

The matter came on for oral argument before the Trial Court on April 1, 2025. On April 4, 2025, the Court issued its Decision and Order (the "April 4, 2025 Decision and Order"), Aa 60, which agreed with SATEC's position. The Court granted

Honeywell access to SATEC's Property - but only for "environmental testing" and not as to "environmental remediation." Instead, the Trial Court transferred to arbitration the four (4) arbitrable issues, as requested by SATEC:

> (a) "Any remaining issues pertaining to the Approved Costs Remediation *[AD #1]* **and methods by which Honeywell intends to remediate** *[AD #2]*, pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, sent to binding arbitration in front of Retired Judge Epstein."
>
> (b) "The Court is satisfied that access to the Property is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that Defendant has raised issues with respect to the Approved Costs of Remediation, Defendant's right to "advice and consent" and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" *[AD #3]* in proposing such remediation strategies."
>
> (c) "Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to Honeywell's request to access the Property and GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate *[AD #4]*, which shall be brought pursuant to the Settlement Agreement between the Parties."

Aa 60, April 4, 2025 Decision and Order (emphasis and parentheticals supplied).

The April 4, 2025 Decision and Order was transmitted to Judge Epstein; and on April 21, 2024 SATEC advised Judge Epstein, in conformity with the Decision and Order, that SATEC believed that there were four (4) issues/topics for the Arbitrator's review and decision making. Aa 244.

On April 16, 2025, Honeywell sought to file a "Counterclaim to SATEC's Counterclaim" in the within matter (Docket ID CHC2025123266). By Docket Entry

on April 17, 2025, the Chancery Clerk advised that said pleading was non-conforming (Docket ID: CHC2025124760).

In response to Honeywell's attempted filing, SATEC transmitted to the Court, under the Five-Day Rule, a proposed Order which indicated that the matter should be stayed or dismissed without prejudice pending arbitration, in conformity with N.J.S.A. 2A:23B-7. Aa 239.

Thereafter, on April 23, 2025, Honeywell filed a motion for leave to file an amended complaint seeking, among other things, judicial authorization to install monitoring wells, conduct groundwater injections, and undertake other "environmental remediation" on the SATEC Property. Aa 225. The foregoing despite the fact that (a) SATEC objected to Honeywell's "environmental remediation" strategy and (b) such issues were already determined by this Court to be ripe for arbitration in conformance with the Settlement Agreement. See *supra*, Aa 60, April 4, 2025 Decision and Order.

In addition, Honeywell's Counsel wrote to Judge Epstein and advised that, in Honeywell's view, only "Approved Costs of Remediation" were at issue in the arbitration; and the other issues that SATEC sought to raise (in conformity with the Settlement Agreement and the April 4, 2025 Decision and Order) were not subject to arbitration. Honeywell further asserted that SATEC was obligated to "confer" with Honeywell in "an effort to resolve the Approved Costs of Remediation" before

the parties could proceed to arbitration on that issue. Aa 216, Honeywell's Correspondence to Judge Epstein, April 23, 2025.

Judge Epstein thereafter directed that the parties "must confer in an effort to resolve [your] differences." See Aa 220, Judge Epstein email, dated April 23, 2025.

SATEC, on April 28, 2025, wrote to Judge Epstein, advised that counsel had conferred and requested that an arbitration scheduling order be entered in order to address the topics referred by the Trial Court's April 4, 2025 Decision and Order. Aa 222.

In response, on April 28, 2025, Judge Epstein sent an email to all counsel (Aa 228) requesting the execution of an arbitration engagement letter.

By letter dated April 30, 2025 (Aa 233) addressed to Judge Epstein, Honeywell's Counsel again disputed the plain language of the Settlement Agreement and the equally plain language of the Trial Court's April 4, 2025 Decision and Order. Honeywell's Counsel attempted to "reargue" the four (4) issues the Trial Court determined were subject to arbitration.

SATEC objected to Honeywell's motion to amend its complaint; and SATEC cross-moved in aid of litigants rights to compel arbitration as to the four (4) arbitrable issues identified in the April 4, 2025 Decision and Order. (Aa 248). SATEC relied upon the Second Supplemental Certification of SATEC's LSRP, Kevin Stattel (Aa252), the Supplemental Certification of SATEC's Chairman, H.

Daniel Branover (Aa57) and the Certification of SATEC's Counsel, with exhibits (Aa195).

By Order dated May 13, 2025 (the "May 13, 2025 Decision and Order") the Trial Court (even though no motion for reconsideration was filed) reduced the areas of arbitrable dispute to one (1): Approved Costs of Remediation. Aa 64. Judge Epstein then also reduced the scope of the arbitration. Aa 247.

SATEC timely appealed the May 13, 2025 Decision and Order, Aa 64, and filed the requested and required Letter of Finality. Aa 74. Honeywell cross-appealed. Aa 99. The only Trial Court motion hearing was held on April 1, 2025; no oral argument was held by the Trial Court with respect to the May 13, 2025 Decision and Order.

STATEMENT OF FACTS

A. The 2009 Settlement Agreement and the Arbitrable Disputes.

SATEC Real Estate Holding, LLC is a limited liability company that owns property located at 10 Milltown Court, Union Township, New Jersey (the "Property"); and SATEC, Inc. (a power management company) is the tenant at the Property. Aa 16, Branover Cert., ¶1.

In or about 2004, SATEC purchased the Property from Northern International Remail and Express Co. ("Northern"), through an auction conducted by the United States Bankruptcy Court. After SATEC purchased the Property, Northern retained the services of Coffey & Associates, LLC (Gregory Coffey, Esq.), an environmental litigation firm, to bring environmental contamination claims against predecessors in title, notably Lester Robbins, Trustee d/b/a Milltown Court Associates and Purex Industries, Inc., as well as Honeywell. The matter was venued in Union County under Docket No. UNN-L-1372-05. The action was started on or about April 15, 2005, and SATEC joined as a party to that action. Id. at ¶3.

After discovery, the parties engaged in extensive and vigorous settlement negotiations with Honeywell; recently retired Superior Court Judge Mark Epstein, J.S.C. ("Judge Epstein") acted as the mediator. Id. at ¶4. After a number of months and a number of mediation sessions, in January 2009 the parties entered into a settlement agreement (the "Settlement Agreement"). Id., Aa 1. The purpose and

intent of the Settlement Agreement were to identify and then remediate the soils and groundwater contamination at the Property. Aa 16, Branover Cert., at ¶4. More specifically, the Settlement Agreement, in Recital ¶C, provides that,

> "the purposes of this Settlement Agreement are to: (i) resolve the Litigation between the Parties, including all claims which were, or could have been, presented in that matter; (ii) **achieve a satisfactory environmental remediation that (a) permits SATEC to finance or sell, at market price, without diminution in value for environmental contamination, the Property, at the earliest possible time, and (b) secure a No Further Action letter from the New Jersey Department of Environmental Protection ("NJDEP") approving the clean-up of soil and groundwater (as may be required by the NJDEP) at the Property . . . ."**

Aa 1, Settlement Agreement, Recital ¶C (emphasis added).

The focus of the mediation, and thereafter the Settlement Agreement, was therefore on removing the contaminated soils which everyone agreed were the cause of the contaminated groundwater. Aa 16, Branover Cert., at ¶5. If there were disputes between SATEC and Honeywell as to the best way forward, the Settlement Agreement required the parties to communicate and work in good faith and, if they could not resolve their differences, the parties agreed to send the matter back to mediation or, if necessary, binding arbitration before Judge Epstein. Id.

The Settlement Agreement mandates that Honeywell coordinate its proposed environmental remediation plans and efforts with SATEC:

> "Honeywell shall prepare and submit, with the advice and consent of SATEC, one or more proposals (individually a **"Proposed Remediation Plan"** and collectively the **"Proposed Remediation**

> **Plans"**) to NJDEP for the environmental remediation of the soils and ground water at the Property."

Aa 1, Settlement Agreement, § 3.1; Aa 16, Branover Cert., at ¶6.

Section 3.1 further provides that, "Honeywell may, in good faith, determine that the most cost-effective and expedient approach for remediation of the soil contamination is to undertake an "at risk" soil removal program, without first submitting that program to NJDEP for review and approval as an Approved Remediation Plan. Use of the foregoing approach to soil remediation by Honeywell shall not negate the requirement to secure an NFA for soils." Id. (emphasis added). SATEC thereby permitted Honeywell "to remove, for off-site disposal, soil as reasonably required to obtain an NFA for soils and thereafter to install a soil "cap" consisting of bituminous asphalt (as appropriate), or other similar impermeable material." Id. at § 3.5. As targeted areas for soil removal were in the Property's parking lots, they already had a bituminous cap (i.e., asphalt) in place; thus, the only reason to "re-install" such a cap would be after soils excavation, which was supposed to happen expeditiously. Id.

As to environmental remediation work to be undertaken by Honeywell, the Settlement Agreement required that,

> **Honeywell shall ensure that remediation proceeds in a timely and workman like manner**. Until the Approved Costs of Remediation (defined in Section 2.1) exceed $2,000,000 **Honeywell shall obtain the consent of SATEC** concerning the manner in which the remediation shall be performed. SATEC shall not unreasonably withhold its consent, subject, nevertheless, to the Parties' rights to

> arbitrate disputes pursuant to the arbitration process set forth in Section 2.4 . . . . Once the Approved Costs of Remediation exceed $2,000,000 (and SATEC is no longer obligated to contribute), Honeywell shall have sole discretion (subject, nevertheless, to a reasonableness standard, the Parties' rights to arbitrate as hereinbefore set forth and Honeywell's express obligations and undertakings pursuant to this Agreement) regarding the manner in which it shall complete any remediation.

Moreover, Honeywell was required to "provide advance notice of any meetings with NJDEP" to SATEC in order to "afford SATEC a reasonable opportunity to participate in such meetings." Aa 1, Settlement Agreement, §3.2 (emphasis added); Aa 16 Branover Cert., ¶7. Section 2.1 of the Settlement Agreement provides that,

> the initial $2,000,000 of Approved Costs of Remediation (as defined below), shall be allocated as follows: Honeywell shall contribute 75% and SATEC shall contribute 25% (up to an aggregate cap of $500,000)." Section 2.2 provides that, "if the total Approved Costs of Remediation exceed $2,000,000, Honeywell shall pay for all costs in excess of $2,000,000."

Aa 1, at §2.1. Finally, §2.4 provides that,

> in the event of any dispute between the Parties over whether any costs or expenses constitute Approved Costs of Remediation, the Parties shall promptly confer in an effort to resolve their differences. If the Parties are unable to resolve any dispute following a reasonable opportunity for joint consultation, then any and every question, dispute, claim or controversy concerning whether any costs or expenses constitute Approved Costs of Remediation shall be finally and non-appealably resolved solely by retired New Jersey Superior Court Judge Mark Epstein.

Id. at §2.4; Aa 16, Branover Cert., ¶8.

During the settlement negotiations in 2009, and thereafter, SATEC communicated with various Honeywell representatives, including representatives of

Jacobs Engineering ("Jacobs') (particularly, Helen Fahy), regarding Honeywell's plans for the environmental remediation. Id. at ¶9. More specifically, during settlement negotiations, there were discussions as to whether or not the best path forward would include immediate soils excavation of the two (2) identified areas of soil contamination (as hereinafter described) at the Property; or, instead, to use targeted soils and groundwater "injections" of various solvents in order to "breakdown" the contamination that was in the soils, which contamination was "leaking" into the groundwater. Id. As to which, and prior to the settlement, SATEC had engaged the services of Hillmann Environmental ("Hillmann") to undertake an environmental assessment of the Property, at a cost of approximately $50,000. Id. Hillmann identified the soils and groundwater contamination in two (2) areas of the Property: (1) an area at the far end of the parking lot, close to a small water tributary (the "Adjacent Parking Area"); and (2) another parking lot area most proximate to the Property's building (the "Building") (the "Building Parking Area"). Id. These two (2) areas are generally depicted on a site diagram prepared by SATEC's current environmental consultants, Gibson & Stattel Environmental, Inc. ("G&S"). Id. at ¶9, Aa 33.

The provisions of the Settlement Agreement relating to the "at-risk" excavation of soils, and thereafter installation of a new asphalt "cap," were thus the result of the settlement negotiations. Aa16, Branover Cert., ¶10. SATEC advised Honeywell of Hillmann's discussions with NJDEP at that time, where NJDEP

rejected the suggestion of only doing injections as opposed to either soils removal only or soils removal followed by any necessary injections. Id.

The foregoing information was part of the "extensive and vigorous negotiations" reflected in the Settlement Agreement (Aa 1, Recital ¶B), and resulted in the agreed upon "expedited approach" to the environmental remediation process of Section 3.0, which provides that:

> The Parties understand and agree that Honeywell may, in good faith, determine that the most cost-effective and expedient approach for remediation of the soil contamination is to undertake an "at risk" soil removal program, without first submitting that program to NJDEP for review and approval as an Approved Remediation Plan. Use of the foregoing approach to soil remediation by Honeywell shall not negate the requirement to secure an NFA for soils.

Aa 1; Branover Cert., Aa 16, ¶11. The purpose of this provision was to allow Honeywell's environmental consultants to initiate the removal of the known contaminated soils from the Property in the Adjacent Parking Area and the Building Parking Area at the earliest moment. Id. This is what SATEC understood would happen at the conclusion of the settlement process. The Settlement Agreement provides that it was Honeywell's obligation to secure for SATEC's benefit a no further action letter ("NFA") from NJDEP for both soils and groundwater. Id.

Subsequent to the execution of the Settlement Agreement, SATEC had continuing discussions with the various environmental personnel identified by Honeywell over the years; and again, as set forth above, with representatives of Jacobs (including Helen Fahy). Id. at ¶12. When asked for Honeywell's proposed

plan for soils and groundwater remediation, SATEC was repeatedly assured by Honeywell and its various environmental consultants (including Helen Fahy) that, "we know what we are doing" and "we will choose the best path forward to expeditiously clean" the Property. Id.

Honeywell spent the next seven (7) years (from 2009 to 2016) "studying" the Property and then in 2016 unilaterally chose not to excavate the contaminated soils, despite the clear and unequivocal language in the Settlement Agreement that specifically authorized an "at risk" soils removal program and gave Honeywell specific permission for off-site disposal of the contaminated soils. Id. at ¶13; Aa 1, Settlement Agreement, §§3.0 and 3.5. Instead of removing the soils between 2009 and 2016, in 2016 Honeywell determined to utilize only "injections" of various chemicals to treat the contamination of the soils and groundwater (the "2016 Injections"). Aa 16, Branover Cert., ¶13.

By the Fourth Quarter of 2022, some 13 years after the Settlement Agreement was executed and some 6 years after the 2016 Injections were performed, Honeywell had allegedly run up costs as part of "Approved Costs of Remediation" in excess of $2,500,000. Id. at ¶14. On November 14, 2022, SATEC's Counsel wrote to Honeywell's Counsel to object to the status of the remediation efforts, and the staggering sums allegedly spent with no end in sight, advising that SATEC would secure its own LSRP, Kevin Stattel, to review the Settlement Agreement and underlying materials regarding soils and groundwater contamination as well as

Honeywell's then proposal to employ yet another round of injections as opposed to excavating the admittedly contaminated soils. Id. at ¶14.

SATEC objected to Honeywell's proposed use of further injections in lieu of soils excavation; and SATEC was not advised of nor did SATEC approve of Honeywell submitting a proposal to NJDEP to undertake additional injections without first removing the contaminated soils. Aa57, Branover Supp. Cert., ¶¶3-5. SATEC's Counsel placed the parties' Arbitrator, Judge Epstein, on notice of the dispute. Aa16, Branover Cert., ¶14; Aa 35. By July 2023, G&S had issued its initial report regarding the status of the Property, and the faults it found with Honeywell's previous work and with Honeywell's proposal for further injections without soils excavation (the "G&S July 2023 Report"). Aa 38.

On September 7, 2023, SATEC's Counsel formally advised Judge Epstein of the continuing dispute and asserted that Honeywell was in breach of the Settlement Agreement. SATEC demanded the issues be addressed through mediation; and, if not resolved at mediation, then SATEC demanded arbitration regarding Honeywell's breach, in accordance with the arbitration process contained in the Settlement Agreement. Aa42; Aa16, Branover Cert., ¶14.

On August 8, 2024, SATEC's Counsel placed Honeywell on notice that SATEC considered Honeywell in breach of the Settlement Agreement, and that G&S would proceed with soils and groundwater sampling later that month. Id.; Aa 55.

Notwithstanding allegedly expending over $2,500,000 (by the end of 2022), Honeywell had only undertaken the 2016 Injections; no soils excavation had been undertaken and Honeywell had (remarkably) performed zero post-2016 Injections soils testing. Aa 16, Branover Cert., ¶15. Most of the $2,500,000 charges had to do with alleged "monitoring" and "reporting expenses." By virtue of the foregoing, SATEC sought to transfer all issues concerning Approved Costs of Remediation and all issues concerning Honeywell's proposed, future remediation for the Property to mediation/arbitration with Judge Epstein. Id. SATEC's position was that Honeywell was obligated to "ensure that remediation proceeds in a timely and workmanlike manner" (Aa 16, Branover Cert., ¶15, Settlement Agreement, §3.2); however, after 16 years, Honeywell had failed to do so since none of the contaminated soils had been removed from the Property, and the soils and groundwater contamination persisted as confirmed by the G&S July 2023 Report. Aa 16, Branover Cert., ¶15. SATEC thus asserted that it had a contractual right to reasonably withhold its consent to Honeywell's proposed remediation strategy (which included more injections but no soils excavation), which SATEC considered to be "unreasonable" under the facts presented and the time elapsed. Id.

SATEC therefore asserted in its Verified Answer and Counterclaim that Honeywell had deprived SATEC of the benefit of SATEC's bargain under the Settlement Agreement, and demanded arbitration as to, among other areas of dispute, Honeywell's proposed "environmental remediation" – consisting of only additional

groundwater/soils injections (rather than removing the known contaminated soils). Aa 122.

In its Verified Answer and Counterclaim (and in the certification of SATEC's Chairman, H. Daniel Branover, Aa 16), SATEC asserted that it waited, patiently, since execution of the Settlement Agreement in 2009 (almost 16 years) for Honeywell to complete the environmental remediation such that SATEC could secure the benefit of the Settlement Agreement and refinance its Property, without diminution in value due to the environmental contamination. Id.; Aa 16, Branover Cert., ¶¶15-17. SATEC submitted to the Trial Court that no reasonable person could believe that there would not be a "diminution in value" to SATEC's Property due to the ongoing soils and groundwater contamination. Sixteen (16) years had been more than enough time for Honeywell to excavate the contaminated soils - as was intended and authorized by the Settlement Agreement. Id. Simply injecting (again), using the same methodologies as in 2016, when those methodologies have not produced any significant reduction in contamination levels in soils or groundwater, appeared to SATEC to be nothing more than a fool's errand. Id. at ¶16. Honeywell's remediation activities cannot "reasonably" be said to be "timely" or "expeditious"; nor can the results of those activities be deemed to be effective remediation of the soils and groundwater contamination at the "earliest possible time." Id.

Accordingly, SATEC cross-moved before the Trial Court to compel arbitration of all four (4) arbitrable disputes. Aa 122. The Trial Court's April 4,

2024 Decision and Order agreed with SATEC, and determined that there were four (4) arbitrable areas of dispute, as identified by SATEC:

1. Approved Costs of Remediation;
2. SATEC's right to "advice and consent" with respect to Honeywell's submissions to NJDEP;
3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed); and
4. The reasonableness of Honeywell's proposed remediation strategy.

Aa 60.

However, on May 13, 2024, the Trial Court *sua sponte* (and without a motion for reconsideration before it) sought to "clarify" its April 4, 2025 Decision and Order and appeared to reverse itself, now explicitly finding only one (1) arbitrable area of dispute (Approved Costs of Remediation):

> **ORDERED** that Defendants' Cross Motion in Aid of Litigant's Rights is hereby **GRANTED** with respect to those issues related to Approved Costs of Remediation and **DENIED** with respect to such other matters that are not explicitly provided for in the Settlement Agreement or this Court's April 4, 2025 Order . . . .

Aa 64. Based upon the language of the May 13th Order, the Arbitrator thereafter errantly limited the scope of the arbitrable issues. Aa247.

SATEC takes issue with the May 13, 2024 Decision and Order, and the Arbitrator's reliance upon same, and seeks reversal of both.

B. Overview of Current Environmental Condition of SATEC's Property[1]

In 2023, SATEC retained Kevin Stattel, a New Jersey Licensed Site Remediation Professional (**"LSRP"**), possessing New Jersey License No. 628261, and a principal of Gibson & Stattel Environmental, Inc. (**"G&S"**), to review the previous environmental investigations, remedial activities and the presently-proposed Honeywell environmental remedial activities (injections only – with no contaminated soils removal). Aa 146, Stattel Cert., ¶1.

Previous environmental studies had identified the potential source of the contamination at the Property as a former concrete pad and nearby parking area on the northern side of the SATEC building. The Area of Concern ("AOC") measured approximately 100 feet by 100 feet. The former concrete tank pad (identified as AOC-1) reportedly housed at least two (2) aboveground storage tanks ("ASTs") which stored chlorinated solvents during the previous owner's (Purex/BBI) years of ownership/operations. Id. at ¶2.

The Property is in a mainly commercial/industrial area of Union Twp., New Jersey, and houses one (1) building ("Building"). The Building was reportedly constructed in 1967 and updated more recently by SATEC to house its offices, assembly facility and warehouse. Id. at ¶3. SATEC is a private manufacturing company that utilizes the Property for research and development, and the assembly

[1] SATEC provides the following only as a brief synopsis of the environmental record, for content as to the four (4) areas of arbitrable dispute.

of energy management systems which include power meters and power quality analyzers. SATEC has operated at the Property since 2004, directly after it purchased the Property from Northern International Remail and Express Co. ("Northern"). Id.

Northern and SATEC brought environmental claims against Honeywell (as successor to Purex/BBI) in or about 2008. Under Recital Paragraph C(ii) of the Settlement Agreement, the stated goal of the environmental remediation of the Property (to be undertaken by Honeywell) was to permit SATEC, "**to finance or sell at market price, without diminution in value for environmental contamination, the Property at the earliest possible time**," and to secure a No Further Action Letter ("NFA") from the NJDEP for soils and groundwater. Id. at ¶4.

Pursuant to N.J.A.C. 7:26C, the *Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS")*, an NFA letter has been replaced with a Response Action Outcome ("RAO") issued by a LSRP. Effective May 7, 2012, the LSRP program was fully implemented, and remediating parties were required to retain a LSRP and remediate the site under the new LSRP program. Id.

As part of the Settlement Agreement, the parties specifically negotiated and agreed that Honeywell was permitted to undertake an "at risk" soil removal program. Such a program meant, under the NFA regulations, that the remediating party would not first seek NJDEP approval for soil excavation. After the issuance of an NFA for soils, SATEC would be responsible for costs associated with monitoring and

maintenance of a soil cap (i.e., reinstallation of asphalt in the parking lot), but the cost of installation of the soil cap would be the responsibility of Honeywell. Id.

Records reviewed by G&S indicated that, in 2010 and 2011, a Preliminary Assessment/Site Investigation ("PA/SI") was completed by Honeywell and its then environmental consultant, CH2M. The PA/SI identified two (2) areas of concern (AOCs) in need of further investigation. The two (2) AOCs were identified as AOC-1 (Former Concrete Tank Pad and Parking Area) and AOC-2 (Unnamed Tributary and Rahway River) - the Unnamed Tributary is adjacent to the adjacent parking area. Since 2010, Honeywell and its consultants have purportedly undertaken substantial "monitoring" and other "investigative processes" with respect to the two (2) AOCs, but have only undertaken one round of soils/groundwater injections in 2016 (the 2016 Injections). Id. at ¶5.

In October 2016, Honeywell/CH2M/Jacobs, without undertaking any removal of the contaminated soils, implemented an injection of a carbon substrate with Zero Valent Iron (ZVI) and a methane inhibitor into the soil and groundwater in AOC-1. Id. at ¶6. The injection targeted the upper soil column within the immediate northern section of the site and former tank pad area (AOC-1) and consisted of only an approximate 5,300 square foot treatment area. Id. This remediation strategy had a non-substantial impact on the overall Property contamination; in fact, exceedances above the NJDEP soils and groundwater cleanup criteria remain. Post remedial soil sampling was not conducted by Jacobs, despite same being required by NJDEP. As

of G&S' retention by SATEC in 2023, no subsequent soil samples had been undertaken by Jacobs. This was confirmed by G&S' communication with Jacobs and the data that Jacobs provided. Id.

Despite the post 2016 Injections continuing exceedances for groundwater contamination documented by Jacobs, and the lack of subsequent soil sampling to confirm/deny exceedances after the 2016 Injections, in 2022 Jacobs proposed to address the remaining soils contamination through the installation of an Engineering Control (a soils cap) (effectively, utilizing the existing macadam parking lot) and Institutional Control (Deed Notice). Id. at ¶7. After review, G&S recommended an alternate course, id., and SATEC objected to Honeywell's current injection proposal, as it failed to address the ongoing soils contamination at the Property, and the impact to groundwater resulting from that soils contamination. Id. at ¶8. G&S and SATEC advised Jacobs and Honeywell that, in the opinion of G&S and SATEC, the appropriate course action subsequent to the 2009 Settlement Agreement should have included removal of all contaminated soils, to the extent practicable. Id. That is, contaminated soils in the Building Parking Area (up to the area of the Building's footings) should have been removed in 2009, and should be removed now. Soils in the Adjacent Parking Area should also have been removed in 2009, and should now be removed - as there is no physical impediment to that excavation. Soils/groundwater injections should only be utilized for impacted soils that cannot reasonably be removed, such as from the under the Building's footings or under the

Building's slab. In those instances, angled injections under and into the Building's slab should be utilized. Id. In the opinion of G&S, such action was the preferred and only permissible remediation approved by NJDEP, as allowing the natural attenuation of free product and residual product in the soils is prohibited. Id. See N.J.A.C. 7:26E-5.1(e).

G&S concluded that Honeywell/Jacobs have ignored the NJDEP's technical requirements, and have further ignored the specific provision negotiated and placed in the Settlement Agreement that permitted an "at risk" soil excavation immediately upon the execution of the Settlement Agreement in 2009. Honeywell has not removed any of the contaminated soils from the SATEC Property. Id.

As of June 2024 (15 years after the Settlement Agreement was executed and 8 years after Honeywell attempted the 2016 Injections, as opposed to soil excavation), Honeywell reports that it has spent a total of $2,938,901 on "investigation and remediation" related to the Former Concrete Tank Pad and Parking Area/Chlorinated Solvent Contamination AOC-1, the Unnamed Tributary and Rahway River AOC-2 and Historic Fill Material AOC-3. Id. at 9. Notwithstanding all the aforementioned reported expenditures, onsite soil, groundwater and surface water contamination levels remain above appliable NJDEP standards. Prior to the 2016 Injections, Honeywell reported that a total of $1,977,754 had allegedly been incurred for "site investigation" and another $961,147 (as of June

2024) for the 2016 Injections and subsequent monitoring. See June 2024 Quarterly Progress Report prepared by Jacobs. Id.; Aa 173.

In response to an inquiry by Jacobs, on July 14, 2023 G&S outlined the costs that would have been incurred in 2016 for soils remediation in the Adjacent Parking Area and the Building Parking Lot as part of the parties' approved "at risk" soil excavation. Id. at ¶10. G&S estimated, based upon historical costs, that the removal of the soils in the Adjacent Parking Area and the removal of the soils in the Building Parking Area, up to the Building's footings, would have cost approximately $616,000 in 2016. Id. This amount is less than or equal to what Jacobs spent for just the 2016 Injections; and would have avoided, in G&S' opinion, nearly $2,000,000 of additional costs for monthly and quarterly "reporting and monitoring" allegedly incurred by Honeywell. Id.

On June 7, 2023 Honeywell/Jacobs proposed additional remedial injections (but no contaminated soils removal) through the use of emulsified vegetable oil (EVO) in an attempt to further remediate the contamination. Aa 146, Stattel Cert., ¶12. This proposed plan outlined an initial round of injections followed by additional injections, approximately two (2) to three (3) years after the initial round. Id. Thus, the continuing active soil contamination remediation to the SATEC Property would continue for at least another (3) years. Id. Honeywell/Jacobs proposed a total of 11 injection points, scattered within AOC-1, the Building Parking lot Area, to the north of the Property's Building. However, based upon G&S'

investigation results post August 2024, the proposed injection areas do not target the appropriate soils contamination, and areas of soils contamination in the Adjacent Parking Area, and thus in G&S' opinion will be ineffectual and a waste of available resources. Id. In addition, investigation or remediation is not proposed by Honeywell/Jacobs for the area under the Building where additional soil contamination was presumed (prior to August 2024) to be present. Id.

In correspondence dated March 15, 2024, G&S asked Honeywell/Jacobs to undertake soils and groundwater sampling plan prior to considering any further remedial proposals for the site. Id. at ¶13; (Aa 181). A proposed plan for sampling of subsurface conditions (i.e., soil and groundwater sampling) was prepared by G&S on SATEC's behalf and provided to Honeywell/Jacobs on March 15, 2024 correspondence (Aa 185). The G&S sampling proposal laid out, in detail, the areas of soils and groundwater sampling that G&S thought reasonable and necessary given the time lapse between the 2016 injections and the most recent soil samples provided by Jacobs/Honeywell (last soil sample dated June 6, 2016, and last groundwater sample dated January 4, 2021). Aa 146, Stattel Cert., ¶13. G&S was of the opinion as of March 2024 that the proposed soil sampling should be completed prior to the installation of any proposed injection wells or any further remediation efforts to ensure they are in the appropriate areas. Id.

After G&S received no reply whatsoever from Honeywell/Jacobs to either the March 15, 2024 correspondence or the March 15, 2024 sampling proposal, G&S

notified Honeywell/Jacobs that G&S planned to undertake the sampling investigation on July 12, 2024; G&S invited Honeywell/Jacobs to observe those sampling activities. Id. at ¶14. Once again, absolutely no response was received from Honeywell or Jacobs acknowledging G&S's planned sampling activities. Id. After providing another thirty (30) days for communication from Honeywell or Jacobs, and with none received, during the week of August 12, 2024 G&S undertook both soil and groundwater samples from the Property, producing the following results:

(A) As to soils, samples were collected from within the previously identified areas of soils contamination. Laboratory analytical results notably revealed the detection of elevated soil contamination within the unsaturated (vadose) zone and saturated zone above the NJDEP Migration to Ground Water (MGW) Soil Remediation Standard (SRS), NJDEP Ingestion-Dermal Exposure Pathway SRS, and NJDEP Inhalation Exposure Pathway SRS. Furthermore, TCE was identified in soil at a maximum concentration of 6.66 milligrams/kilogram (mg/kg) (sample VS-7C), which is above the NJDEP MGWSRS of 0.0065 mg/kg and NJDEP Residential Inhalation Exposure Pathway SRS of 3 mg/kg. Honeywell's previous investigations identified TCE in MW-107S, adjacent to boring VS-6 at a maximum concentration of 44 mg/kg in March 2011.

(B) Vinyl chloride was identified in soil at a maximum concentration of 24.5 mg/kg (sample VS-17C), above the NJDEP MGWSRS of 0.0067 mg/kg,

NJDEP Residential Ingestion-Dermal Exposure Pathway SRS of 0.97 mg/kg, NJDEP Non-Residential Ingestion-Dermal Exposure Pathway SRS of 5 mg/kg, NJDEP Residential Inhalation Exposure Pathway SRS of 1.4 mg/kg, NJDEP Non-Residential Inhalation Exposure Pathway SRS of 6.4 mg/kg. Honeywell's previous investigations identified vinyl chloride in SB-202, adjacent to boring VS-17 at a maximum concentration of 14.4 mg/kg in May 2016. Two (2) distinct areas of contamination were identified which consist of an area directly south of site monitoring well MW-106S (the Adjacent Parking Area - Area 1), and an area located directly north of the northern Building structure wall and underneath the northeast corner of the Building structure (the Building Parking Area - Area 2. Id. at ¶14 (A) and (B).

It was the opinion of G&S that Honeywell/Jacob's proposed additional remediation strategy (i.e., further EVO injections) was unsupported for the following non-exclusive list of reasons (Aa 146, Stattel Cert., ¶17):

(A) The Honeywell/Jacobs proposal utilized old data (soils and groundwater) that did not reflect the current conditions based on the results of G&S's August 2024 investigation, as highlighted above.

(B) The overall timeframe proposed by Honeywell to complete its new round of EVO injections will take several years (at a minimum 2-3 years) before the efficacy of those

EVO injections can be determined. It should be noted that the Property has missed the NJDEP Remedial Action Mandatory Timeframe of May 7, 2024, and the Property can be subject to NJDEP Direct Oversight. The Honeywell/Jacobs proposed remediation timeframe will further extend the current out of compliance status at the Site. However, it is G&S' opinion that if soils excavation is undertaken in the Adjacent Parking Area and the Building Parking Area, the overall results for the Property will be improved and the timeframe for completion of remedial activities at the Property significantly shortened.

(C) The ineffectiveness of the 2016 Injections to remediate the Site's soils and groundwater contamination to concentrations below the NJDEP applicable standards. TCE concentrations remain three (3) orders of magnitude above the GWQS almost six (6) years after the 2016 Injections were completed; and 16 years after the Settlement Agreement was executed.

(D) Sites contaminated by Tetrachloroethene (PCE) and TCE (such as the Property) may not show complete de-chlorination during anaerobic degradation. The de-chlorination process can often stall at cis-1,2-dichloroethene

(cis-DCE) or vinyl chloride (VC). Exhibit 6-1 in the May 2022 RAR/RAW, cis-DCE and VC showed notable increases, not decreases. Since VC is more toxic than the original contaminants, incomplete de-chlorination is not acceptable. The foregoing emphasis that, for the subject Property, strictly relying upon EVO injections (such as the 2016 Injections and the proposed 2025 injections) was not, in G&S' opinion, the appropriate methodology to address the soils and groundwater contamination at the SATEC Property.

(E) The Honeywell/Jacob 2025 proposed targeted treatment injection plan does not adequately address the full extent of soils contamination at the Site, as the contaminated Building Parking Area (along the northern Building wall and underneath the northeast corner of the Building) is remarkably not entirely within the proposed injection area. Additionally, the proposed targeted treatment area interval (7-feet to 15-feet bgs) does not adequately address the known full soils contamination zone of three (3)-feet to 14-feet bgs.

(F) The Honeywell/Jacobs proposed Remedial Action Work Plan does not include any post injection soil sampling evaluations, only groundwater sampling

(G) Finally, the Honeywell/Jacobs proposed deed notice (presumably in order to address presumptive, remaining soil free product and residual product) is specifically prohibited by N.J.A.C. 7:26E-5.1(e). In effect, Honeywell/Jacobs wants to leave the known/existing soil contamination in the ground (thereby, in G&S' opinion, further contributing to groundwater contamination in the future) and then "cover it up" with the existing asphalt parking lot cap.

(H) In sum, in G&S' opinion based upon the Property's environmental history and the August 2024 sampling results, the current Honeywell/Jacobs proposal was not reasonable from an environmental engineer's perspective.

The Settlement Agreement provided for a more traditional and cost-effective remediation option, specifically soils excavation and off-site disposal. Id. at ¶18. The parties to the Settlement Agreement specifically included the option for "at risk" soils excavation, even before NJDEP approval could be obtained.

In G&S view, had soils excavation (either through an "at risk" procedure or NJDEP approved workplan) been conducted on the known contaminated soils prior to the 2016 Injections, future environmental obligations would have been reduced and/or eliminated, and the timeline to bring the Property into compliance for soils and groundwater contaminations would have been substantially shortened. Id. G&S

2024 sampling results (soils and groundwater) confirmed that the Honeywell/Jacobs 2016 Injections were ineffective, and the proposed 2025 injections would obtain the same ineffective results. Id. Further, the proposed 2025 injections do not cover areas that were found by G&S' August 2024 sampling to have continuing soils contamination. Over 8 years after the 2016 Injections, soils contamination concentrations at the Property still greatly exceed the NJDEP SRS. Id.

It was G&S' further opinion that traditional soil excavation (as contemplated by the Settlement Agreement) with off-site disposal is not only viable but the preferred option to address the shallow contamination zones in the Adjacent Parking Lot and the Building Parking Lot. Id. at ¶19. As to areas where soil excavation is not feasible from an engineering standpoint (those areas under the Building's foundation and under the Building's concrete floor slab), then and only then would in-situ injection treatment of the saturated contamination zones, as proposed by Honeywell/Jacobs, be appropriate. Id. G&S thus recommended removal of source soil contamination to the extent reasonably possible prior to consideration of any in-situ injection treatments, as there is no impediment to soils removal in the Adjacent Parking Area, as the contaminated soils in that area is readily accessible for excavation. As to the Building Parking Area, along the side of the Building, soils excavation can proceed to a reasonable area adjacent to the Building's foundation, with consideration for in-situ injections for all under foundation and under Building

areas. Id. at ¶20. In G&S' opinion, in-situ injections should only be considered after known soils contamination is excavated. Id. at ¶¶ 20-21.

The foregoing methodology (soils removal first, followed by any necessary injections) maximizes the probability that the environmental remediation at the Site will be successful, and timely. Id. The Honeywell/Jacobs 2025 Proposal (injections only, and in limited areas) would not achieve the goal of the Settlement Agreement since soils contamination would continue to exist under the Honeywell/Jacobs proposal, G&S concluded. Id. It was thus the reasoned opinion of G&S that completing a remediation that will remove readily accessible contaminated soils will prevent another set of lengthy and failed injections, reduce costs and effectively remediate the Site's soil and groundwater chlorinated solvent contamination within a responsible timeframe.

Based upon the results of G&S August 2024 soils and groundwater investigations, Honeywell's proposal for additional injections (prior to excavating the known contaminated soils), would not in G&S opinion, remediate the SATEC Property as injections (without contaminated soils excavation and removal) would not adequately address the areas of confirmed soils contamination. Id. at ¶22. In consideration of the opinions of G&S, SATEC reasonably objected to Honeywell's proposed environmental strategy (further injections, with no contaminated soils removal), and sought arbitration. Aa 122.

STANDARD OF REVIEW

An appellate court conducts a de novo review of a trial court's determination of legal issues, Ross v. Lowitz, 222 N.J. 494, 504 (2015), and its "application of legal principles to . . . factual findings." Lee v. Brown, 232 N.J. 114, 127 (2018) (quoting State v. Nantambu, 221 N.J. 390, 404 (2015)). If a trial judge makes a discretionary decision, but acts under a misconception of the applicable law, an appellate court need not defer to that exercise of discretion; instead, the court must adjudicate the controversy under applicable law in order to avoid a manifest denial of justice. State v. Steele, 92 N.J. Super. 498, 507 (App. Div. 1966); Kavanaugh v. Quigley, 63 N.J. Super. 154, 158 (App. Div. 1960). A "trial court's interpretation of the law and the consequences that flow from established fact are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). Thus, a trial judge's legal conclusions and the application of those conclusions to the facts are subject to plenary review. Id.

As to agreements to arbitrate, a de novo review applies when an appellate court reviews determinations about the enforceability of contracts, including arbitration agreements." Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 316 (2019). "Whether a contractual arbitration provision is enforceable is a question of law, [and the appellate court] need not defer to the interpretative analysis of the trial . . . court[] unless we find it persuasive." Ibid. (parentheticals added).

The validity of an arbitration agreement thus presents a question of law. Ogunyemi v. Garden State Med. Ctr., 478 N.J. Super. 310, 315 (App. Div. 2024) (citing Skuse v. Pfizer, Inc., 244 N.J. 30, 46 (2020) (a trial court's interpretive analysis should not be deferred to unless an appellate court finds its reasoning persuasive)). "We owe no special deference to the Trial Court's interpretation of an arbitration provision, which we view 'with fresh eyes.'" Ibid. (quoting Morgan v. Sanford Brown Inst., 225 N.J. 289, 303 (2016)). Courts must be, "mindful of the strong preference to enforce arbitration agreements, both at the state and federal level." Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013).

Accordingly, the key questions for an appellate court when reviewing a motion to compel or deny arbitration are "(1) whether there is a valid and enforceable agreement to arbitrate disputes; and (2) whether the dispute falls within the scope of the agreement." Wollen v. Gulf Stream Restoration & Cleaning, LLC, 468 N.J. Super. 483, 497 (App. Div. 2021) (citing Martindale v. Sandvik, Inc., 173 N.J. 76, 83 (2002)).

A court must first apply contract-law principles to determine "whether a valid agreement to arbitrate exists." Hojnowski v. Vans Skate Park, 187 N.J. 323, 342 (2006). "[A] party must agree to submit to arbitration." Hirsch, 215 N.J. at 187 (citing Guidotti v. Legal Helpers Debt Resol., L.L.C., 716 F.3d 764, 771 (3d Cir. 2013) (explaining that "a judicial mandate to arbitrate must be predicated upon the parties' consent")). Under our state's defined contract law principles, a valid and

enforceable agreement requires: (1) consideration; (2) a meeting of the minds based on a common understanding of the contract terms; and (3) unambiguous assent. Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442-45 (2014).

The reviewing court's second task is to "ascertain the intention of the parties as revealed by the language used, the situation of the parties, the attendant circumstances, and the objects the parties were striving to attain." Celanese Ltd. v. Essex Cnty. Imp. Auth., 404 N.J. Super. 514, 528 (App. Div. 2009). "Where the terms of a contract are clear, we enforce the contract as written and ascertain the intention of the parties based upon the language." Pollack v. Quick Quality Rests., Inc., 452 N.J. Super. 174, 187-88 (App. Div. 2017).

"A basic principle of contract interpretation is to read the document as a whole in a fair and common sense manner." Hardy ex rel. Dowdell v. AbdulMatin, 198 N.J. 95, 103 (2009). "[T]he terms of the contract must be given their 'plain and ordinary meaning.'" Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002) (quoting Nester v. O'Donnell, 301 N.J. Super. 198, 201 (App. Div. 1997)). "Where the terms of an agreement are clear, we ordinarily will not make a better contract for parties than they have voluntarily made for themselves, nor alter their contract for the benefit or detriment of either . . . ." Carroll v. United Airlines, Inc., 325 N.J. Super. 353, 358 (App. Div. 1999). In other words, "[i]f the contract into which the parties have entered is clear, then it must be enforced as written." Serico v. Rothberg, 234 N.J. 168, 178 (2018) (quoting In re Cnty. of Atl., 230 N.J. 237, 254-55 (2017)).

LEGAL ARGUMENT

POINT I
(addressed below, Aa 66-68)

THE APRIL 4, 2025 DECISION AND ORDER – DIRECTING ARBITRATION OF FOUR AREAS OF DISPUTE AS ARGUED BY SATEC - WAS CORRECTLY DECIDED; THE MAY 13, 2025 DECISION AND ORDER WAS NOT

By its April 4, 2025 Decision and Order, the Trial Court fully resolved the action by (1) granting Honeywell summary relief for "access" to undertake "environmental testing," and (2) granting SATEC's cross-relief for referral of "any issues remaining" under the Settlement Agreement to arbitration, particularly as to any "environmental remediation" proposed by Honeywell. The Trial Court's language on April 4, 2025 could not have been more clear:

> (a) "Any remaining issues pertaining to the Approved Costs Remediation[2] and methods by which Honeywell intends to remediate,[3] pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, sent to binding arbitration in front of Retired Judge Epstein."
>
> (b) "The Court is satisfied that access to the Property is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that Defendant has raised issues with respect to the Approved Costs of Remediation, Defendants right to "advice and consent"[4] and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" in proposing such

[2] AD#1
[3] AD#2
[4] AD#3

> remediation strategies."[5]
>
> (c) "Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to Honeywell's request to access the Property and GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate, which shall be brought pursuant to the Settlement Agreement between the Parties."

Aa 60, April 4, 2025 Decision and Order (emphasis supplied).

The Trial Court's May 13, 2025 Decision and Order effectively *sua* sponte overruled the April 4, 2025 Decision and Order, and adopted a confusing legal determination as to the arbitrable issues, inconsistent with the plain language of the Settlement Agreement:

> **ORDERED** that Defendants' Cross Motion in Aid of Litigant's Rights is hereby **GRANTED** with respect to those issues related to Approved Costs of Remediation and **DENIED** with respect to such other matters that are not explicitly provided for in the Settlement Agreement or this Court's April 4, 2025 Order,
>
> Accordingly, Plaintiff's Motion to Amend their Complaint is hereby DENIED without prejudice and Defendant's Cross-Motion in Aid of Litigants' Rights is hereby GRANTED with respect to issues relating to Approved Costs of Remediation and DENIED with respect to issues not explicitly required to be arbitrated before Judge Epstein (ret.) and not explicitly ordered by this Court in its April 4, 2025 Order.

[5] AD#4

Aa 64. There is no need for the Trial Court to attempt to "clarify" its April 4, 2025 ruling. In so doing, the Court's confusing language in its May 13th ruling lead to an equally confusing (and incorrect) determination by the Arbitrator – who interpreted the Court to mean that "only" Approved Costs of Remediation would be referred to arbitration. Aa 247. Both the May 13th ruling and the Arbitrator's subsequent determination are incorrect readings of the plain language of the Settlement Agreement, and the clear intent of the Parties to that Agreement – as evidenced by a holistic review of that Agreement and the explanatory background circumstances recounted in the Branover Certification (Aa 16).

SATEC submits that this *sua sponte* reconsideration by the Trial Court on May 13, 2025 was error, and against the plain language of the Settlement Agreement.

Accordingly, the May 13, 2025 Decision and Order, as well as the Arbitrator's June 6, 2025 determination (Aa 247), should be reversed, and the following language of the April 4, 2025 Decision and Order reinstated as to the "scope of the arbitration." Thereby, there would again be four (4) arbitrable issues, as follows:

> (a) "**Any remaining issues pertaining to the Approved Costs Remediation[6] and methods by which Honeywell intends to remediate,**[7] pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, **sent to binding arbitration in front of Retired Judge Epstein.**"
>
> (b) "The Court is satisfied that access to the Property

[6] AD#1
[7] AD#2

> is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that **Defendant has raised issues with respect to the Approved Costs of Remediation, Defendants right to "advice and consent"[8] and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" in proposing such remediation strategies."**[9]
>
> (c) "**Defendants' Motion to Compel Arbitration** is hereby DENIED in part with respect to Honeywell's request to access the Property and **GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate, which shall be brought pursuant to the Settlement Agreement between the Parties."**

Aa 60, April 4, 2025 Decision and Order (emphasis supplied).

A. The Settlement Agreement is Clear on its Face and Should be Enforced as to the Four (4) Arbitrable Areas of Dispute, as found in the April 4, 2024 Decision and Order. (addressed below Aa 66-68)

The Settlement Agreement includes a mutually negotiated, binding arbitration provision, with a designated Arbitrator and the designation of New Jersey law. Aa 1, §§ 2.4, 3.1 and 3.2. The express scope of the arbitration includes, but is not limited to, (1) issues concerning "Approved Costs of Remediation," (2) SATEC's right to "advice and consent" and (3) to object to Honeywell's proposed course of environmental remediation (further injections as opposed to soils excavation with

[8] AD#3
[9] AD#4

limited injections), and (4) Honeywell's "reasonableness" in proposing its present remediation strategy.

The provisions of the Settlement Agreement, §2.4, as to Approved Costs of Remediation, as well as §§3.1 and 3.2, as to SATEC's ability to "not unreasonably withhold its consent" concerning "the manner in which the remediation shall be performed" and the "reasonableness standard" to be applied to Honeywell's discretion as to the remediation protocols to be employed, are all issues specifically reserved for the designated Arbitrator, Judge Epstein.

Honeywell and SATEC, through the efforts of Judge Epstein, negotiated and executed the Settlement Agreement in 2009, thereby binding themselves to the terms thereof. The Settlement Agreement specifically recites, in Recital Paragraph B, that there were "extensive and vigorous negotiations" leading to the Settlement Agreement, which was intended to resolve all environmental disputes regarding the SATEC Property.

The "process" for the arbitration is set forth in §2.4 of the Settlement Agreement, which process includes that Judge Epstein would render a "final and non-appealable decision." Id. In the event that Judge Epstein was unable or unwilling to serve as Arbitrator, the Settlement Agreement provided a methodology for a replacement Arbitrator. Id. The Settlement Agreement did not provide to any party the right to proceed back to the Law Division in the event of disputes. Instead, those disputes would be handled by a single Arbitrator, identified as Judge Epstein.

More specifically, and most pertinent to the disputes before this Court, is the language of §§ 2.4, 3.1, 3.2 and 3.3 of the Settlement Agreement relating to disputes that were to be submitted to Judge Epstein for determination. Aa 1.

First, in § 2.4 the Settlement Agreement provides that if there are any disputes as to "whether any costs or expenses constitute Approved Costs of Remediation, the Parties shall promptly confer in an effort to resolve their differences." As set forth in the Branover Certification (Aa 57) and in the Stattel Certification (Aa 146), SATEC has objected to Honeywell's alleged Approved Costs of Remediation, and has placed Judge Epstein on notice of that objection. As a result, Honeywell and SATEC are bound to proceed to arbitration before Judge Epstein as to the appropriate level of Approved Costs of Remediation. In that regard, the Settlement Agreement provides that, "if the Parties are unable to resolve any dispute following a reasonable opportunity for joint consultation, **then any and every question, dispute, claim or controversy concerning whether any costs or expenses constitute Approved Costs of Remediation shall be finally and non-appealably resolved solely by retired New Jersey Superior Court Judge Mark Epstein**." Aa 1, §2.4 (emphasis added).

Second, § 3.1 of the Settlement Agreement provides that, "Honeywell shall prepare and submit, with the advice and consent of SATEC, one or more proposals (individually a "Proposed Remediation Plan" and collectively the "Proposed Remediation Plans") to NJDEP for the environmental remediation of the soils and

ground water at the Property." Aa 1. Honeywell has failed to do so with respect to the 2016 Injections and with respect to Honeywell's presently proposed additional injections.

Third, § 3.2 of the Settlement Agreement provides that, "Honeywell shall ensure that remediation proceeds in a timely and workman like manner." Aa 1. In the sixteen (16) years post the Settlement Agreement's execution, only one (1) round of injections has been employed by Honeywell, with no soils excavation. Aa 16, Branover Cert., ¶¶ 13-14.

Fourth, § 3.2 of the Settlement Agreement further provides that, "Until the Approved Costs of Remediation exceed $2,000,000 Honeywell shall obtain the consent of SATEC concerning the manner in which the remediation shall be performed. SATEC shall not unreasonably withhold its consent, subject, nevertheless, to the Parties' rights to arbitrate disputes **pursuant to the arbitration process set forth in Section 2.4.**" Aa 1.

Section 3.2 of the Settlement Agreement also provides that, "Once the Approved Costs of Remediation exceed $2,000,000 (and SATEC is no longer obligated to contribute), Honeywell shall have sole discretion (subject, nevertheless, to a reasonableness standard, **the Parties' rights to arbitrate as hereinbefore set forth** and Honeywell's express obligations and undertakings pursuant to this Agreement) regarding the manner in which it shall complete any remediation." Aa 1.

A determination by Judge Epstein as to Approved Costs of Remediation thus impacts the standard to be applied under the arbitration of Honeywell's chosen remediation strategies. SATEC asserts that, even if Judge Epstein were to determine that Approved Costs of Remediation validly exceed $2,000,000 at this point in time, Honeywell's unilateral determination to employ further injections (as opposed to soils excavation first, followed potentially by limited injections thereafter), fails under a "reasonableness standard" and Honeywell's "express obligations and undertakings pursuant" to the Settlement Agreement. Section 3.3 also requires Honeywell to "act, at all times, in a reasonable manner."

All of those four (4) discreet (but related) issues (as well as other issues that may arise out of or otherwise be related to those issues) must be submitted to Judge Epstein in accordance with the clear and unambiguous "**arbitration process**" contained in the Settlement Agreement, at § 2.4.

N.J.S.A. 2A:23B-7(e) provides that, "if a proceeding involving a claim referable to arbitration pursuant to an alleged agreement to arbitrate is pending in court, an application pursuant to this section shall be made in that court." In such an instance, the Court "shall proceed summarily to decide the issue in order for the parties to arbitrate unless it find that there is no enforceable agreement to arbitrate." N.J.S.A. 2A:23B-7(a)(2). In this case, the Settlement Agreement executed by both Honeywell and SATEC includes explicit reference to, and an agreement to be bound

by, a defined arbitration procedure before Judge Epstein. Of that, there can be no dispute.

When reviewing a motion to compel arbitration, courts apply a two-pronged inquiry: (a) whether there is a valid and enforceable agreement to arbitrate disputes; and (b) whether the dispute falls within the scope of the agreement to arbitrate. Martindale v. Sandvik, Inc., 173 N.J. 76 (2002). Here, two sophisticated parties, SATEC and Honeywell, with the help of a then-retired Superior Court Judge (Judge Epstein), crafted the Settlement Agreement in 2009. Therein, the parties specifically provided for arbitration of disputes with Judge Epstein (given his knowledge of the matter). By virtue of the express language of the Settlement Agreement, those issues are to be decided by a final and non-appealable arbitration decision rendered by Judge Epstein. The Trial Court's April 4, 2025 Decision and Order correctly recognized this, and properly interpreted the Settlement Agreement. as providing for four (4) broad arbitrable issues. Aa 60. In contrast, the May 13, 2025 Decision and Order thoroughly confused the issues and deprived SATEC of its right arbitrate those four (4) areas of arbitrable dispute identified in the April 4, 2024 Decision and Order. By virtue of (and in reliance upon) the confusing language of the Trial Court's May 13, 2025 Decision and Order, the Arbitrator thereafter errantly confined the arbitrable issues to one: Approved Costs or Remediation. Aa 247.

There is a strong preference in the State of New Jersey to enforce arbitration agreements. Hirsh v. Amper Fin. Servs, LLC, 215 N.J. 174, 186 (2013); *see also*,

Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 133 (2020) "[T]he affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving disputes" (quoting Martindale v. Sandvik, Inc., 173 N.J. 76, 92 (2002)). As our Supreme Court in Atalese v. U.S. Legal Services Group, LLP, 219 N.J. 430 (2014) held, "an arbitration clause need not contain a "prescribed set of words . . . to accomplish a waiver of rights" to proceed in a court proceeding. Id. at 447. In Kernahan v. Home Warranty Adm'r of Florida, Inc., 236 N.J. 301, 320 (2019), the Court held that Atalese "imposes no talismanic recitations, acknowledging that a meeting of the minds can be accomplished by any explanatory comment that achieves the goal of apprising the consumer of her rights." *See also*, Cnty. of Passaic v. Horizon Healthcare Servs., Inc., 474 N.J. Super. 498, 504 (App. Div. 2023), holding that, "an express waiver of the right to seek relief in a court of law to the degree required by Atalese is unnecessary when parties to a commercial contract are sophisticated and possess comparatively equal bargaining power."

In the case at bar, both Honeywell and SATEC are sophisticated commercial enterprises; they employed a retired Superior Court Judge, Judge Epstein, to act as mediator in 2009; and the parties had competent environmental litigation counsel, as referenced in the UNN-L-1372-05 Docket, to craft an agreement by which the parties would be bound to arbitrate a variety of discrete but interrelated issues concerned environmental remediation with Judge Epstein - not just Approved Costs of Remediation. That was part of the "benefit of the bargain" that SATEC secured

from Honeywell, and it was a means to allay SATEC's fears that Honeywell would act "fast and loose" with SATEC in the ensuing years. Aa 16, Branover Cert., ¶¶ 18-20.

Arbitration agreements "should . . . be read liberally to find arbitrability if reasonably possible." Jansen v. Salomon Smith Barney, Inc., 342 N.J. Super. 254, 257 (App. Div. 2001). A court should resolve all doubts related to the scope of an agreement "in favor of arbitration." Id. at 258.

The language of the Settlement Agreement is clear; and the surrounding circumstances, as set forth in the Branover Cert. (Aa 16, ¶9), reinforce the Parties' agreement to arbitrate not simply Approved Costs of Remediation. The Settlement Agreement (Aa 1) provides for arbitration of the following four (4) issues, as originally identified by the Trial Court in its April 4, 2025 Decision and Order:

> 1. Approved Costs of Remediation (Settlement Agreement, §§2.1 and 2.4);
>
> 2. SATEC's right to "advice and consent" with respect to Honeywell's various submissions to NJDEP (Settlement Agreement, §3.1, and as set forth in §3.2, "SATEC should not unreasonably withhold its consent, subject, nevertheless, to the Parties' rights to arbitrate disputes pursuant to the arbitration **process** set forth in §2.4");
>
> 3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed) (Settlement Agreement, §3.2, "subject, nevertheless, to the Parties' rights to arbitrate disputes pursuant to the arbitration **process** set forth in §2.4"); and

> 4. The "reasonableness" of Honeywell's proposed remediation strategies (Settlement Agreement, §3.2, "subject, nevertheless, to a reasonableness standard, the Parties' rights to arbitrate as hereinbefore set forth and Honeywell's express obligations and undertakings pursuant to this agreement") regarding the manner in which it will complete any remediation.

As the Trial Court held in the April 4, 2025 Order and Decision (Aa 60), the clear terms of the Settlement Agreement pertain to the environmental remediation of the Property, including the removal of contaminated soils. Issues concerning this, and Honeywell's unilateral decision as to the methodology for remediation both in 2016 and presently, are subject to arbitration. However, the Trial Court's May 13, 2025 Order and Decision (Aa 64) errantly modified (for no appreciable reason and with no motion for reconsideration filed) the April 4, 2025 Order and Decision and thereby improperly restricted SATEC's contractual right to arbitrate disputes with Honeywell.

The Trial Court's limitation of the scope of arbitration in its May 13, 2025 Decision and Order resulted in a similar preclusion by the Arbitrator (Aa 247), to merely arbitrable issues concerning Approved Costs of Remediation. Indeed, the Arbitrator reviewed the Trial Court's May 13, 2025 Decision in so ruling. The Arbitrator wrote to the Parties and advised as follows:

> This is to confirm that my interpretation of Judge Mega' s 4/4/25 order and statement of reasons as clarified by Judge Mega's 5/13/25 order and statement of reasons is that the defendants' motion to compel arbitration with respect to those matters provided for in the settlement agreement

> applies only to section 2.4 of the agreement relating to approved costs of remediation.

Aa 247.

The Trial Court's May 13, 2025 limitation of the scope of arbitration is plain error. Similarly, the Arbitrator's reliance upon the Trial Court's May 13, 2025 Order and Decision is also plain error. The clear and express language of the Settlement Agreement encompasses not only arbitration of Approved Costs of Remediation, but also the other three (3) areas of dispute.

What the Trial Court did in its May 13, 2025 Decision and Order was to confuse the issues and, in effect, modify the matters transmitted to arbitration under the April 4, 2025 Decision and Order. The May 13, 2025 Decision and Order should therefore be reversed.

B. The Settlement Agreement is a Contract and Must be Interpreted in Accordance with Basic Principles of Contract Law. (addressed below Aa 66-68)

[A]n agreement to arbitrate, like any other contract, 'must be the product of mutual assent, as determined under customary principles of contract law.'" Atalese, 219 N.J. at 442 (citing NAACP of Camden Cty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 424 (App. Div. 2011)). "Mutual assent requires that the parties have an understanding of the terms to which they have agreed." Ibid. A legally enforceable agreement requires a "meeting of the minds." Ibid. (citing Morton v. 4 Orchard Land Tr., 180 N.J. 118, 120 (2004)).

The Settlement Agreement is, without question, a contract between Honeywell and SATEC. It resolved the then existing litigation, created contractual rights and obligations of both Honeywell and SATEC; and the Parties agreed to the forum and scope of future matters of dispute that would be sent to arbitration as opposed to litigation. As previously noted, there is no litigation provision (or judicial reservation) in the Settlement Agreement – and the reason is simple: the Parties intended and agreed to arbitrate any dispute with Judge Epstein. One need only review the entire Settlement Agreement in conjunction with the Branover Certification to come to that inescapable conclusion. Honeywell provided no certification to the Trial Court to rebut the factual assertions contained in the Branover Certification.

The legal principles that govern contract interpretation are well established. "Generally, the terms of an agreement are to be given their plain and ordinary meaning." M.J. Paquet, Inc. v. N.J. Dep't of Transp., 171 N.J. 378, 396 (2002). The interpretation of contract terms "are decided by the court as a matter of law unless the meaning is both unclear and dependent on conflicting testimony." Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 92 (App. Div. 2001).

A court faced with a disagreement over how to interpret a contract must first decide if an ambiguity exists. "An ambiguity in a contract exists if the terms of the contract are susceptible to at least two reasonable alternative interpretations. . . ." Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997). Therefore, in

"interpreting a contract, a court must try to ascertain the intention of the parties as revealed by the language used, the situation of the parties, the attendant circumstances, and the objects the parties were striving to attain." Celanese Ltd. v. Essex Cnty. Improvement Auth., 404 N.J. Super. 514, 528 (App. Div. 2009).

At no point in either the April 4, 2025 Decision and Order or the May 13, 2025 Decision and Order did the Trial Court conclude that the Settlement Agreement was in any way ambiguous. As a result, the Trial Court was obligated to enforce the Parties' "contract" as written - as was generally done in the April 4, 2025 Decision and Order. In contrast, the May 13, 2025 Decision and Order effectively "re-wrote" the contract, and thereby improperly deprived SATEC of its contract right to arbitrate disputes - beyond merely arbitrating Approved Costs of Remediation. This was plain error on the part of the Trial Court.[10]

C. The Settlement Agreement Contains No Ambiguous Language, and Thus Must be Afforded its Plain Meaning; and Even if a Provision of the Settlement Agreement is Deemed to be Ambiguous, the Agreement as a Whole Favors Arbitration of all Disputes. (addressed below Aa 66-68)

[10] Once the Trial Court determined in the April 4, 2025 Order and Decision to refer the four (4) issues to arbitration, the matter was "final" for purposes of appellate review. R. 4:49-2. The Trial Court's determination thereafter to effectively "reconsider" the April 4, 2025 Order and Decision on May 13, 2024 was therefore error - as April 5, 2025 Order and Decision was no longer interlocutory in nature. The matter should have been stayed at that point in time, as SATEC requested. Aa 239. The Trial Court erred in not doing so, as Honeywell did not file a motion for reconsideration by April 24, 2025; nor did Honeywell timely appeal the April 4, 2025 Order and Decision. Accordingly, the Trial Court's actions in entering the May 13, 2025 Order and Decision (and thereby effectively "reconsidering" the April 4, 2025 Order and Decision) were error, and should be reversed.

Even if there is an ambiguity in the Settlement Agreement, this Court can review surrounding circumstances in 2009 (see Branover Certification) as to the intent of the Parties - particularly concerning the removal of the contaminated soils. With respect to which, it was undisputed before the Trial Court that the Parties' joint intent was, in fact, to remove the contaminated soils. As Branover sets forth in his Certification, why else would the Parties include a "at-risk" provision for soils excavation even before NJDEP approval? Aa 16, ¶16.

Further, Branover submitted that, even before the settlement with Honeywell, SATEC's then-environmental firm, Hillman, sought to undertake groundwater injections in lieu of removing soils. That proposal was submitted to NJDEP, and rejected. Id. at ¶9. The Stattel Certification further confirms that natural attenuation of contamination is not possible with an active source (i.e., the contaminated soils) at the site. Aa 146, ¶¶ 8 and 176. Thus, even if this Court were to find there were ambiguities in the Settlement Agreement, the issue of what the "scope of the remediation" should have been (contaminated soils excavation versus Honeywell's unilateral policy of injections) and the "reasonableness" of Honeywell's environmental strategies and whether SATEC consents to those remediation strategies) should nevertheless be transmitted to arbitration before the Parties' designated Arbitrator. [11]

[11] In this instance, it is particularly telling that the appointment of an Arbitrator, who served as the Mediator in 2009 and thus has knowledge of the scope and intent of

In instances where there is any apparent ambiguity concerning the meaning of contractual terms, a court is permitted to consider extrinsic evidence beyond the "four corners" of the contract's text. As our Supreme Court has instructed:

> [W]e allow a thorough examination of extrinsic evidence in the interpretation of contracts. Such evidence may "include consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage, and the interpretation placed on the disputed provision by the parties' conduct." "Semantics cannot be allowed to twist and distort [the words'] obvious meaning in the minds of the parties." Consequently, the words of the contract alone will not always control.

Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 269 (2006) (alteration in original) (citations omitted). As such, "[a]court's objective in construing a contract is to determine the intent of the parties," and, in that quest, "'the court must consider the relations of the parties, the attendant circumstances, and the objects they were trying to attain.'" Id.at 320-21 (quoting Tessmar v. Grosner, 23 N.J. 193, 201 (1957)).

Honeywell did not provide any certifications to the Trial Court in response to the Branover Certification as to the Parties' contractual "intent" for environmental remediation - i.e., the removal of the contaminated soils at the earliest possible instance; nor was an opposing certification provided by Honeywell as to the Parties'

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the Settlement Agreement, was important for SATEC (as Branover indicates) because it would expedite resolution of any future issues; and the Arbitrator would be uniquely situated to resolve any questions as to the parties' intent on the remediation process, as well as any deviation by Honeywell in the future. Aa 16, ¶20.

"intent" as to arbitration for resolution of future disputes. SATEC's position as to soils removal was consistent with the Settlement Agreement paragraph entitled "At risk soils removal." It was thus undisputed before the Trial Court that soils removal was the intent of the Parties. Therefore, the issue of whether what Honeywell undertook in 2016 (without SATEC's approval) and what Honeywell proposes in 2025 (also without SATEC's approval), is a violation of Honeywell's obligations under the Settlement Agreement (to both secure SATEC's consent and, in any event, to propose "reasonable" remedial environmental strategies) is an issue for the Arbitrator. The plain language of the Settlement Agreement compels referral to arbitration. The April 4, 2025 Decision and Order recognized this; the May 13, 2025 Decision and Order (and the Arbitrator's June 6, 2025 determination – relying on the May 13th Order) do not.

CONCLUSION

For the foregoing reasons, Appellants request reversal of the Trial Court's May 13, 2025 Decision and Order as to the scope of the parties' arbitration before Judge Epstein. Appellants submit that the scope of the arbitration should include the four (4) arbitrable issues contained the Settlement Agreement, as identified by Satec:

1. Approved Costs of Remediation;
2. SATEC's right to "advice and consent" with respect to Honeywell's submissions to NJDEP;
3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed); and
4. The reasonableness of Honeywell's proposed remediation strategy.

These four (4) arbitrable issues were recognized by the Trial Court's April 4, 2025 Decision and Order:

> (a) "Any remaining issues pertaining to the Approved Costs Remediation[12] and methods by which Honeywell intends to remediate,[13] pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, sent to binding arbitration in front of Retired Judge Epstein."
>
> (b) "The Court is satisfied that access to the Property is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that Defendant has raised issues with

[12] AD#1
[13] AD#2

> respect to the Approved Costs of Remediation, Defendants right to "advice and consent"[14] and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" in proposing such remediation strategies."[15]
>
> (c) "Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to Honeywell's request to access the Property and GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate, which shall be brought pursuant to the Settlement Agreement between the Parties."

Aa 60, April 4, 2025 Decision and Order (emphasis added). There was no need for the Trial Court to revisit the April 4, 2025 Decision and Order on May 13th, as no timely motion for reconsideration had been made by Honeywell, and as the April 4th Order was final for appeal purposes. Accordingly, the four (4) arbitrable issues should be referred to Judge Epstein for determination without further delay – such that SATEC's Property can finally be properly remediated by Honeywell, and the contaminated soils removed. Sixteen years has been long enough.

Respectfully Submitted,

/s/ Patrick J. Spina
PATRICK J. SPINA, ESQ.
ATTORNEY FOR APPELLANTS,
SATEC, INC., AND SATEC REAL ESTATE HOLDING, LLC

DATED: SEPTEMBER 5, 2025

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[14] AD#3
[15] AD#4

---------- X

HONEYWELL INTERNATIONAL INC.,

Plaintiff-Respondent/Cross-Appellant,

vs.

SATEC, INC.; SATEC REAL ESTATE HOLDING, LLC,

Defendants-Appellants/Cross-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-003317-24

Civil Action

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, UNION COUNTY, ORDER ENTERED MAY 13, 2025

Docket No. in The Court Below:
UNN-C-14-25

Sat Below:
Hon. Robert J. Mega, P.J. Ch.

---------- X

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT/CROSS-APPELLANT HONEYWELL INTERNATIONAL INC.

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Dated: October 27, 2025

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TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules and Regulations

Other Authorities

PRELIMINARY STATEMENT

This appeal arises from an ongoing dispute regarding the cleanup of a contaminated property located at 10 Milltown Court in Union Township, New Jersey ("Site"). Plaintiff-Respondent/Cross-Appellant Honeywell International Inc. ("Honeywell") is the person responsible for conducting the remediation ("PRCR") at the Site pursuant to an Administrative Consent Order ("ACO") issued by the New Jersey Department of Environmental Protection ("DEP") and a January 6, 2009 Settlement Agreement ("Agreement"), entered into with Defendants-Appellants/Cross-Respondents SATEC Real Estate Holding, LLC and SATEC, Inc. (collectively, "SATEC"). The Site is currently owned and operated by SATEC.

The Agreement designated Honeywell as the PRCR and in charge of overseeing the cleanup. As a result, the Agreement requires SATEC to permit Honeywell reasonable access to the Site for environmental investigation and remediation purposes. The Agreement makes clear that the environmental remedy for the Site will be a restricted use remedial action that includes the use of engineering and institutional controls. The Agreement provides Honeywell with "sole discretion" regarding how to conduct the remediation once the remediation costs exceed $2 million (which has already taken place). Lastly, the Agreement contains a narrow arbitration clause which governs disputes over

which specific costs, incurred by either party, constitute Approved Costs of Remediation, a defined term in the Agreement. It is this provision that is front and center in this appeal.

For over a decade, Honeywell has been cleaning up the Site pursuant to its contractual and legal obligations as the PRCR with SATEC's knowledge and consent. In 2022, SATEC began attempting to renegotiate the Agreement by preventing Honeywell from accessing the Site to complete the cleanup, which has impeded Honeywell's efforts to complete the remediation and caused Honeywell to miss DEP's regulatory and mandatory remediation deadlines.

To resolve these types of disputes, the Legislature established a formal protocol for a PRCR to obtain access to a property to conduct an environmental cleanup ("Access Statute"). The Access Statute requires that if good-faith efforts are unsuccessful, the PRCR shall seek an order from the court directing the property owner to grant access to the property, and the court is required to promptly issue an order for access so long as it is "reasonable and necessary" to remediate the contamination. The Access Statute does not, in authorizing access to complete remediation, infringe on or impede the property owner's rights in any way. In accordance with this statutory directive, Honeywell filed a summary action. In response, SATEC filed a non-germane cross-motion seeking arbitration under the Agreement to renegotiate the remedial action.

After hearing oral argument and extensive motion practice, the trial court correctly concluded that Honeywell had a right under the governing law and the Agreement to access the Site and that based on the plain language of the Agreement the only issue subject to binding arbitration is whether any costs do or do not constitute Approved Costs of Remediation, as defined in the Agreement. The trial court erred, however, by considering SATEC's cross-motion because the Access Statue expressly bars the adjudication of non-germane claims. Moreover, the trial court stayed the case at SATEC's request pending resolution of the arbitration, thereby further delaying Honeywell's ability to remediate the Site. Such rulings are inconsistent with the law and have improperly curtailed Honeywell's statutory obligation to perform the cleanup.

Unable to refute the black letter law and the Agreement's plain and unambiguous terms, SATEC invites this Court to redraft the Agreement by reading into it terms and conditions to which the parties did not agree. This Court should not entertain SATEC's request simply because SATEC now has second thoughts about the Agreement it entered into in 2009. The time has come for this protracted litigation to end. Accordingly, this Court should modify the trial court's May 13, 2025 ruling by lifting the trial court's stay to allow Honeywell to access the Site to complete its cleanup and make clear that the only arbitrable issue under the Agreement is disputes over Approved Costs of Remediation.

PROCEDURAL HISTORY

On February 3, 2025, Honeywell filed a Verified Complaint and Order to Show Cause ("OTSC") in the Union County Vicinage, Chancery Division, General Equity Part ("trial court") pursuant to the Access Statute to obtain access to the Site to install monitoring wells, conduct groundwater injections, and complete an environmental remediation, pursuant to its obligations under the Agreement, the ACO and environmental laws and regulations. Aa107. On February 7, 2025, the trial court issued an order requiring SATEC to appear to be heard on why judgment should not be entered for Honeywell granting it the right to access the Site for the purposes of installing monitoring wells and conducting groundwater injections and any other remedial activities required by DEP. Ra263. SATEC did not file an opposition to Honeywell's Verified Complaint and OTSC. Instead, in violation of the Access Statute, it filed a non-germane cross-motion to compel arbitration. Ra266. On March 12, 2025, SATEC filed an Answer with three counterclaims included ("Answer and Counterclaims"). Aa122. SATEC did not request leave of court before filing its counterclaims. Ibid.

Oral argument was conducted telephonically on April 1, 2025. Aa61. After hearing oral argument, the trial court issued a decision on April 4, 2025 ("April 4th Order"), granting Honeywell's OTSC in its entirety and partially

granting SATEC's cross-motion to compel arbitration only with respect to those issues provided for in the Agreement. Aa60.

On April 10, 2025, SATEC's counsel sent a letter to the designated arbitrator in the Agreement, Mark B. Epstein, J.S.C. (Ret.) ("Judge Epstein") attaching the trial court's April 4th Order and requesting a proposed date for an initial mediation session. Aa243. On April 21, 2025, SATEC's counsel sent a second letter to Judge Epstein unilaterally proposing a date for an initial mediation session and setting forth the issues purportedly subject to mediation and arbitration without conferring with Honeywell's counsel. Aa244. Two days later, Honeywell responded to SATEC's letter by notifying Judge Epstein that Honeywell was not available for SATEC's proposed date and that SATEC had not made clear which costs it was alleging did not constitute "Approved Costs of Remediation," which was the only issue subject to arbitration. Aa216.

On April 23, 2025, Honeywell filed a motion to amend its Verified Complaint in response to SATEC's counterclaims. Aa225. Shortly thereafter, Honeywell's and SATEC's counsel met and conferred telephonically. Ra283. During this meet and confer, SATEC's counsel stated that notwithstanding the trial court's April 4th Order, SATEC's position was that Honeywell's environmental consultants were permitted access to the Site, but **not for the**

purpose of conducting remedial activities, including groundwater injections. Ibid.

Following this meet and confer, SATEC's counsel sent another letter to Judge Epstein again representing that the scope of arbitration goes beyond what constitutes "Approved Costs of Remediation" under the Agreement. Aa222. On April 30, 2025, Honeywell's counsel responded via letter maintaining that the only issues subject to arbitration were disputes over Approved Costs of Remediation. Aa233.

On May 1, 2025, in response to Honeywell's motion to amend its complaint, SATEC filed a cross-motion in aid of litigant's rights contending that any disputes between the parties regarding the cleanup of the Site were subject to arbitration. Aa248. Thereafter, Honeywell filed its own motion in aid of litigant's rights arguing that SATEC's refusal to grant it access to the Site violated the trial court's April 4th Order. Ra298.

On May 13, 2025, the trial court denied Honeywell's motion to amend its complaint and partially granted SATEC's cross-motion ("May 13th Order"), holding that only issues with respect to Approved Costs of Remediation are arbitrable and staying the matter pending resolution of the arbitration. Aa64. No oral argument was conducted. In its decision, the trial court ruled that SATEC

was required to provide Honeywell access to the Site in accordance with the April 4th Order. Aa73.

On May 23, 2025, the trial court partially granted Honeywell's motion in aid of litigant's rights and reiterated that SATEC must provide Honeywell access to the Site but continued the stay of the litigation ("May 23rd Order"), thereby impeding Honeywell from satisfying its contractual and legal obligations to remediate the contamination present at the Site. Ra297. The trial court noted that "no application has been made to modify or dissolve the relief granted [to Honeywell] in the April 4, 2025 Order." Ra304. As a result, the trial court stated the "May 13, 2025 Order did not stay the April 4, 2025 Order." Ibid. Yet, despite the trial court's clear instructions regarding its ruling, SATEC continues to take the position that the stay issued by the trial court precludes Honeywell from accessing the Site to conduct remediation.

Thereafter, Honeywell and SATEC participated in an initial case management conference on June 6, 2025 with the designated arbitrator, Judge Epstein, who concluded that the only issue subject to arbitration was disputes over whether the costs expended constituted Approved Costs of Remediation as defined in the Agreement. Aa247.

On June 23, 2025, SATEC filed a Notice of Appeal of the trial court's May 13th Order, contending that the trial court and arbitrator improperly limited

the scope of arbitration. Aa74, 91. Honeywell cross-appealed on July 8, 2025, seeking to lift the stay to complete the cleanup. Aa99. The parties attended mediation on August 7, 2025, but were unsuccessful in resolving the matter.

On August 28, 2025, Honeywell filed a motion for summary disposition and in the alternative an application to accelerate the appeal. SATEC filed an opposition to said motion on September 8, 2025. On October 2, 2025, the Appellate Division denied Honeywell's motion for summary disposition and granted its application to accelerate the appeal. Ra306. The parties are currently in arbitration before Judge Epstein to address SATEC's as yet unspecified claim that Honeywell's costs to date do not meet the contractual definition of "Approved Costs of Remediation," with the arbitration hearing tentatively scheduled for April 2026, at the earliest.

COUNTERSTATEMENT OF FACTS

Background & Site History

The Site is zoned for industrial use and consists of a single-story commercial building, a parking lot, and a limited area of undeveloped land. Ra217. Historic fill material[1] is located throughout the Site. Ra218. The Site's

[1] Historic fill is material generally deposited to raise the topographic elevation of a site. The DEP considers historic fill material an area of concern pursuant to N.J.A.C. 7:26E-1.8. Due to historic fill's ubiquity throughout the State, the presumptive environmental remedy for such material requires the recording of a deed notice and may also require an engineering control.

water table is relatively shallow, and the soils possess low permeability characteristics. Ra229. Due to the proximity of the Rahway River, the Site experiences frequent flooding. Ra293. In 2011, Hurricane Irene caused the Rahway River to overflow its banks and inundate the Site with floodwater. Ra294. Approximately ten years later, Hurricane Ida resulted in acute flooding throughout the Site and forced SATEC to work in trailers in the parking lot on the Site for almost a year, delaying Honeywell's remediation. Ibid.

The Site was formerly leased and operated by Honeywell's corporate predecessor Baron-Blakeslee Inc. ("Baron"), a division of Purex Industries, Inc., ("Purex") from approximately 1967 to 1970 for the storage and distribution of chlorinated solvents. Ra293. In 1991, Northern International Remail and Express Company ("Northern") purchased the Site. See Northern Intern. Remail and Exp. Co. v. Robbins, 2010 WL 4068204 (App. Div. Aug. 18, 2010) (slip op. at 1). After taking ownership of the Site, Northern sought to refinance the property and conducted an environmental investigation. Id. at 3. The environmental investigation was conducted by Roux Associates and indicated that chlorinated volatile organic compounds ("cVOCs") were present in the Site's groundwater above DEP's regulatory standards and may be attributable to Baron's former operations. Ibid.

In 2003, SATEC entered into a contract of sale with Northern to purchase the Site. Northern Intern. Remail and Exp. Co. v. Coffey & Assocs., PC, No. A-2104-17T4 (App. Div. June 10, 2020) (slip op. at 1). The purchase price for the Site was $975,000. Ibid. As part of its due diligence, SATEC retained Code Environmental Services, Inc. ("CODE") to sample the soil and groundwater. Robbins, 2010 WL at 4. CODE detected cVOCs in the soil and groundwater above the applicable regulatory standards. Ibid. As a result of this environmental investigation, Northern significantly reduced the purchase price and SATEC purchased the Site for the sum of $400,000. Coffey, No. A-2104-17T4 at 1. The Site is currently owned and operated by SATEC.

On or about April 15, 2008, Northern and SATEC filed a lawsuit in the Union County Vicinage, Law Division (Docket No. UNN-1372-05) against Honeywell and other prior owners and operators of the Site, asserting claims under the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and common law, to recover a $438,000 credit Northern extended to SATEC for clean-up costs. Coffey, No. A-2104-17T4 at 2. The complaint alleged, among other things, that Baron discharged hazardous substances into the soil and/or groundwater, and that Purex and Honeywell, as corporate successors to Baron, were liable under the Spill Act for the discharges of hazardous substances. Ibid. In February 2008, Northern and SATEC agreed

to mediate their Spill Act claims against Honeywell. Ibid. The settlement negotiations between SATEC and Honeywell continued into 2009, when a resolution was reached via the Agreement. Ibid.

The Settlement Agreement

On January 6, 2009, the parties entered into the Agreement to resolve the above-referenced litigation. Aa1. The settlement negotiations lasted more than a year, with all parties being represented by sophisticated counsel.

The Agreement conclusively established in pertinent part that: (i) Honeywell is designated as the PRCR for the Site and is responsible for engaging and overseeing the necessary contractors, consultants, and other environmental professionals to perform the cleanup and obtain regulatory closure of the Site; (ii) the cleanup mechanism for the Site would be a restricted use remedial action and include the use of institutional controls[2] and engineering controls[3]; (iii) Honeywell must seek approval from DEP for the remedy; (iv)

[2] Institutional controls provide notice to the public in the form of a deed notice or classification exception area that hazardous substances remain in the soil and/or groundwater above DEP's remediation standards. See N.J.A.C. 7:26E-1.8.

[3] An engineering control is a physical mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. An engineering control may include, without limitation, a cap, cover, building, dike, trench, leachate collection system, fence, physical access control, and ground water containment system including, without limitation, a slurry wall and a ground water pumping system. See N.J.A.C. 7:26E-1.8.

Honeywell is required to pay 75% of all remediation costs up to $2 million, pay all remediation costs in excess of $2 million, pay all of SATEC's litigation costs for the above-referenced litigation, and pay SATEC an additional $25,000; (v) SATEC's contribution for the remediation is capped at $500,000[4] and is not due until either (a) the Site is sold, refinanced or transferred or (b) sixty (60) days after the receipt of a No Further Action Letter ("NFA") from DEP, whichever occurs earlier; and (vi) that once the costs of remediation have exceeded $2 million (which occurred in 2016) Honeywell shall have "sole discretion" regarding the manner in which the remediation is conducted. Aa1-15.

A key component of the Agreement was Honeywell's ability to manage the cleanup of the Site as opposed to making a large cash contribution. Coffey, No. A-2104-17T4 at 3. Accordingly, Section 3.2 of the Agreement is titled "*Honeywell To Manage Remediation*" and makes clear that it is Honeywell, and not SATEC, that "shall engage and manage the necessary contractors . . . to perform the remediation of the Property and obtain the NFA." Aa7. While Honeywell is responsible for overseeing the remediation of the Site, the Agreement requires Honeywell to obtain SATEC's consent regarding the environmental remedy for a limited duration of time. Ibid. Specifically, "[u]ntil

[4] SATEC has provided Honeywell with a first lien mortgage encumbering the Site to secure its payment of $500,000. Coffey, No. A-2104-17T4 at 3, n. 4.

the Approved Costs of Remediation exceed $2,000,000 Honeywell shall obtain the consent of SATEC concerning the manner in which the remediation shall be performed." Ibid. Notably, "once the costs of remediation have exceeded $2 million Honeywell shall have **sole discretion** (subject to a reasonableness standard, the parties' rights to arbitrate pursuant to Section 2.4, and Honeywell's express obligations and undertakings pursuant to this Agreement) regarding the manner in which it shall complete any remediation." Ibid. (emphasis added). Thus, after the $2 million monetary threshold is reached, Honeywell is no longer required to obtain SATEC's consent regarding the way it conducts the cleanup. Ibid.

To allow Honeywell to achieve its remedial objective, the Agreement requires SATEC to provide Honeywell with reasonable access to the Site for remediation and investigation purposes and **directs SATEC to cooperate in the execution and recording of deed notices for the Site**. Aa9. The parties' intentions to utilize deed notices as part of the cleanup for the Site are memorialized in the recitals section of the Agreement, which notes that one of the purposes of the Agreement is to "allow the use of engineering and institutional controls during remediation of the Property, if approved by [DEP]." Aa2. Once the institutional controls are approved, SATEC has the responsibility to oversee the long-term monitoring and maintenance and any costs associated

with the long-term monitoring and maintenance "as may be required by the Deed Notice(s)." Aa9. Section 3.6 further provides if the Site is sold by SATEC, "this obligation shall run with the land." Ibid. The requirement to use institutional controls as part of the contemplated restricted use remedial action for the cleanup is expressed again in Section 3.7 of the Agreement, which states "SATEC shall permit the recording of Deed Notice(s) sufficient to permit the application of [DEP's] non-residential direct contact or alternative restricted use soil criteria." Aa9. The Agreement also makes clear that contaminated soils may remain on the Site so long as the use of engineering and/or institutional controls do not "impair the **present or future use of the Property** for its current commercial purpose as a warehouse/office or light industrial facility, or for any approved **non-residential uses** allowed under the current existing zoning regulations." Ibid. (emphasis added). The obligation to permit the use of institutional and engineering controls runs with the land in perpetuity. Ibid.

The Agreement also affords Honeywell broad discretion in how it chooses to address the contaminated soils at the Site as part of its cleanup. For example, Section 3.1 states that "Honeywell **may**, in good faith determine that the most cost-effective and expedient approach for remediation of the soil contamination is to undertake an 'at-risk' soil removal program . . . ." Aa6 (emphasis added). Additionally, Section 3.5 states "[SATEC] will **permit** Honeywell to remove,

for off-site disposal, soil as reasonably required to obtain an NFA . . . .” Aa8 (emphasis added). Thus, while the Agreement makes clear that the excavation of soils is a permissible remedial action, it is by no means mandated under the Agreement.

Shortly after the Agreement was executed, the Site Remediation Reform Act (“SRRA”), N.J.S.A. 58:10C-1 to -28, became effective on May 7, 2009. With the enactment of the SRRA, a Licensed Site Remediation Professional (“LSRP”) program was established, LSRPs now oversee the cleanup of contaminated sites, and DEP’s approval for most remediation documents is no longer necessary. See N.J.S.A. 58:10C-14. As a result of these changes, several of the remediation documents identified in the Agreement are no longer part of the DEP site remediation process, and other documents are prepared in a sequence different from the sequence that is set forth in the Agreement.

For example, Section 3.1 of the Agreement requires Honeywell to prepare and submit a “Proposed Remediation Plan” to DEP for its approval and requires the parties to use their best efforts to obtain an “Approved Remediation Plan.” Aa6. Due to the enactment of the SRRA, however, the preparation of and certification of remediation documents is now performed by an LSRP and the LSRP’s certification of a remediation document is sufficient under the SRRA for a document to be considered final under New Jersey law. N.J.S.A. 58:10C-

14. Accordingly, an "Approved Remediation Plan" as referenced in Section 3.1 of the Agreement no longer exists. Another example is that prior to the enactment of the SRRA, DEP would issue an NFA letter after the approval of a Remedial Action Report ("RAR"). Ra293. If the remedy called for a deed notice, a deed notice would be recorded following issuance of the NFA. This is the sequence of approvals set forth in the Agreement, which was consistent with New Jersey law in effect at that time. See Aa6. In accordance with DEP's former site remediation process, Section 3.1 of the Agreement requires Honeywell to obtain an NFA for both soil and groundwater. Ibid. Under the SRRA, however, a response action outcome ("RAO") is now the equivalent of an NFA letter and is issued by the LSRP retained to oversee the remediation for the Site. See N.J.S.A. 58:10C-14. The issuance of a RAO does not occur until all remedial action permits ("RAP") are approved, which does not take place until after deed notices are recorded. Ibid. Thus, the final remediation document that triggers the payment identified in Section 2.3 of the Agreement is now the RAO, and not the NFA.

Section 2.4 of the Agreement contains a limited dispute resolution provision titled "*Disputes Concerning Approved Costs of Remediation*" which requires the parties to meet and confer regarding any disputes relating to "Approved Costs of Remediation." Aa5. Section 2.4 provides if Honeywell and

SATEC are "unable to resolve any dispute following a reasonable opportunity for joint consultation, then any and every question, dispute, claim or controversy concerning **whether any costs or expenses constitute Approved Costs of Remediation** shall be finally and non-appealably resolved solely by retired New Jersey Superior Court Judge Mark Epstein." Ibid. (emphasis added). The "Approved Costs of Remediation" are defined in Section 2.1 of the Agreement in relevant part as:

> (i) those expenses and costs for sampling, analysis, investigation, monitoring or cleanup, equipment costs, disposal fees, certain costs of operation and maintenance . . . , consultants' and engineers' fees, laboratory costs, contractors' and subcontractors' fees, incurred attorneys' fees, as well as expenses incurred in preparing and submitting a remedial action plan (or plans) or remedial action report (or reports) to [DEP] . . . ; (ii) the allocable costs of in-house personnel of Honeywell and [SATEC] involved in management of remediation who may be billed at reasonable commercial rates according to a schedule of fees to be approved in advance by the Parties; (iii) out of pocket expenses incurred by [SATEC], after reasonable advance notice to Honeywell, for operational and relocation expenses which are caused by remediation activities; and (iv) application and filing fees, and governmental agency oversight fees.

Aa3-4. Section 2.4 is the only clause identified as a dispute resolution provision in the Agreement. Ibid.

The only other language in the Agreement concerning dispute resolution is contained in Section 3.2 titled "*Honeywell To Manage Remediation*." Aa7. Both references in this provision to arbitration, however, merely refer back to

Section 2.4. Ibid. Specifically, Section 3.2 states in pertinent part that: (1) "[SATEC] shall not unreasonably withhold its consent, subject nevertheless, to the Parties' rights to arbitrate disputes **pursuant to the arbitration process set forth in Section 2.4**" and (2) "Once the Approved Costs of Remediation exceed $2,000,000, Honeywell shall have sole discretion (subject, nevertheless, to . . . the Parties' **right to arbitrate as hereinbefore set forth**) . . . ." Ibid. (emphasis added). Thus, based on the plain language of the Agreement, only disputes concerning "Approved Costs of Remediation" are subject to arbitration.

Honeywell's Environmental Investigation & Remediation of the Site

The Site's groundwater and soil are contaminated with cVOCs that exceed applicable DEP remediation standards. The cVOCs are in the soils and groundwater near the former concrete pad area and are near active businesses, beneath SATEC's employee parking lot, and partially underneath SATEC's existing building. Ra007. Soil gas concentrations of several constituents have also been detected beneath SATEC's building that exceed DEP's non-residential screening criteria. Ra225. These environmental conditions limit the ways in which the cleanup can be conducted. See Ra008-09.

Due to the above-referenced conditions, SATEC's prior environmental consultant determined that excavation of the cVOCs is ill advised because "the physical removal of additional contaminated soil could endanger building

structures, impede the operation of the site, would not address the groundwater contamination below the site, and likely would not be effective due to the groundwater level." Ra009. Moreover, the removal of the soil would require substantial excavation and extensive engineering measures to support the excavation (such as driving into the ground a sheet-pile support wall, which would generate significant vibrations that may endanger the structural integrity of SATEC's building). Ra290.

Notably, Honeywell's LSRP determined these activities would interrupt SATEC's business operations for a significant amount of time, both to install the support systems and to excavate the soils and backfill and compact the excavation. Ibid. Honeywell's LSRP also concluded that because of the shallow water table, dewatering would need to be performed as part of the excavation. Ibid. Thus, the consensus from most environmental consultants that have investigated the Site, including consultants retained by SATEC, has been that injections are the appropriate remedial action to address the soil and groundwater contamination at the Site, while imposing a "minimal degree of impact to the Site and SATEC's operations." Ibid.

Environmental consultants have also concluded that due to the relatively low permeability of the soil above the water table, the presence of concrete and asphalt surface materials, and the presence of a dense clay layer below the water

table, migration of the contaminants has been restricted and is unlikely to hinder in-place soil treatments. Ra009. Due to these conditions, Honeywell and SATEC's former environment consultants have concluded that in-situ injections were the most appropriate remedial action to address the cVOCs at the Site. Ra009, 231. Accordingly, in-situ chemical reduction,[5] which involves injecting chemical or biological reagents into the groundwater and/or soil to help reduce contaminants into less toxic or less mobile forms, was selected as the environmental remedy for the Site, with SATEC's approval.

Since 2009, Honeywell has been actively conducting environmental investigation and remediation activities at the Site in accordance with the terms and conditions of the Agreement, the SRRA, the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS"), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation ("Technical Regulations"), N.J.A.C. 7:26E. The cleanup is being conducted under Program Interest ("PI") number G000004564 and PI Name "Purex Corp Baron Blakeslee Division," which is available for public review through the DEP Data Miner website. Data

[5] It is described as "in-situ" because it is conducted in place, without having to excavate soil or pump groundwater above ground for cleanup.

Miner's Case Tracking Tool allows the public to access the status of Honeywell's cleanup.[6]

The LSRP for the Site is currently Theodoros Toskos ("Mr. Toskos") (license #575839) of Jacobs Engineering Group Inc. (Jacobs"). Ra286. As the LSRP retained for the Site, Mr. Toskos is responsible for the oversight and ultimate approval of the investigation and remediation of the Site. N.J.S.A. 58:10C-14.

The Investigation/Remediation of the Site

In order for this Court to fully appreciate Honeywell's extensive investigation and remediation efforts at the Site, Honeywell provides the following background information regarding the cleanup.

By early 2010, Honeywell's environmental consultant, CH2M HILL Engineers, Inc. ("CH2M"), which was later acquired by Honeywell's current environmental consultant, Jacobs, began conducting site investigation and assessment activities. Ra011. As part of this process, CH2M was required to seek access from the adjacent property owners, Union County and O. Berk, to install monitoring wells and conduct sampling of their respective properties.

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[6] When the DEP oversees remediation of a site it gives the site a unique Program Interest or "PI" Number and posts a summary of the information submitted to DEP on the Data Miner website. This is the "best available" information and is readily accessible to the public so it can track DEP activity on a "Case Tracking Tool" for each site. See [redacted] njems.nj.gov/ DataMiner.

Ra025. CH2M also prepared a Site Investigation Work Plan and met with SATEC at the Site to discuss the scheduled remedial activities throughout the year. Ra027. In 2011, CH2M installed monitoring wells, conducted soil and groundwater sampling, finalized an access agreement with Union County to obtain access to conduct sampling, and negotiated access terms with O. Berk to conduct soil, groundwater, and vapor intrusion investigations on the adjacent property. Ra033, 035. In November 2012, indoor air sampling was conducted by CH2M at SATEC's building, which detected concentrations of trichloroethene that exceeded DEP's Indoor Air Screening Levels. Ra049. By the end of 2012, after years of attempting to gain access to the adjacent properties (which SATEC is fully aware of), CH2M was finally able to obtain access to all the adjacent properties required to be sampled as part of Honeywell's environmental investigation. Ra052.

In 2013, CH2M, *inter alia*, installed a sub slab depressurization system ("SSDS") at the Site to address soil gas concentrations that exceeded DEP's non-residential vapor intrusion screening criteria, completed the required DEP indoor air samples associated with the installation of the SSDS, and installed additional monitoring wells. Ra055-63. The SSDS is currently in operation and Jacobs's personnel are required to access the Site to conduct periodic monitoring and maintenance of the SSDS. Ra288. By the end of 2014, CH2M had prepared

and submitted to DEP a Preliminary Assessment/Site Investigation Report (which was provided to SATEC), installed additional monitoring wells, and conducted additional groundwater and surface water sampling. Ra067-069.

By 2015, CH2M began preparing for the implementation of the remedial action to reduce the cVOCs in the soil and groundwater at the Site via in-situ injections. Ra076. As part of its implementation of the remedial action, CH2M prepared a report titled *Work Plan, Interim Remedial Measure Using In Situ Chemical Reduction, Former BBI Union Site, Union New Jersey* ("Work Plan") and submitted a Permit-By-Rule Discharge to Ground Water Authorization ("Discharge to Groundwater Permit") request for DEP's approval. Ra082. In February 2016, DEP approved the request and issued a Discharge to Groundwater Permit, allowing Honeywell to perform in-situ injections at the Site. See Ra270.

In September and October 2016, Honeywell, with SATEC's consent as to the remedy and approval to access the Site, conducted the first round of in-situ injections at fifty-two (52) locations across the Site. Ra270. The Work Plan, which was provided to SATEC, was clear that multiple rounds of in-situ injections may be required to complete the remediation. Ra288. Multiple rounds of post-injection groundwater sampling were performed at the Site, first monthly, then quarterly, between 2016 and 2021, to confirm the stability and

longevity of the remedial action. Ra271, 295. The sampling results demonstrated that the injections significantly reduced the cVOC concentrations in the groundwater; however, additional remediation via reagent injections is required to further degrade the cVOCs present in the groundwater at the Site. Ra288-89. At some point during the 4th Quarter of 2016, the costs of remediation exceeded the $2 million threshold. Ra089. None of these costs were challenged by SATEC.

In March 2017, CH2M submitted its Remedial Investigation Report ("RIR") for the Site to DEP. Ra090. The RIR detailed the investigatory activities, the nature and extent of the contamination, and recommended the placement of a deed notice at the Site as contemplated under Section 3.7 of the Agreement. Ra295. After the RIR was submitted, CH2M continued its post-injection groundwater monitoring to evaluate the remedial effectiveness of the in-situ injections, conducted additional groundwater sampling to confirm the stability and longevity of the remedial action, and performed ongoing maintenance and monitoring of the SSDS. See, e.g., Ra092, 094, 096, 098.

On September 5, 2021, Hurricane Ida caused significant flooding at the Site, which forced SATEC's employees to work in trailers in the parking lot for close to a year. Ra294. This event delayed Honeywell's remediation of the Site.

Ibid. As discussed above, this was the second significant flooding incident to occur at the Site since the remediation commenced.

On March 28, 2022, Mr. Toskos became the LSRP retained for the Site. Ra286. In May 2022, Jacobs submitted its RAR and Remedial Action Work Plan ("RAWP") for the Site to DEP and provided a copy to SATEC. Ra144, 210. The RAR/RAWP documented that the in-situ injections had successfully reduced the cVOCs present in the groundwater at the Site. Ra228. Based on these findings, Jacobs determined that additional injections would likely be successful in treating the residual contaminant mass and reduce groundwater concentrations. Ibid.

In 2023, in preparation for conducting the next round of injections, Mr. Toskos submitted a Discharge to Groundwater Permit request to DEP. Ra271. DEP approved this request on August 21, 2023, authorizing Honeywell to perform another round of in-situ injections to remediate the cVOCs present in the groundwater at the Site. Ra238. Unfortunately, this remedial action was never completed due to SATEC's refusal to permit Honeywell access to the Site. Since this time, minimal remedial activities have been performed. The DEP deadline to complete the remediation is 2030.

Honeywell's Communications with SATEC

To ensure that SATEC was kept informed of the remediation activities being conducted at the Site, Honeywell has provided regular updates regarding the remedial status of the Site. Ra293-95. These regular updates were in the form of written reports as well as in-person meetings with SATEC. Ibid. For example, beginning in 2010, Honeywell consistently provided SATEC with quarterly reports summarizing the remedial status of the Site and the costs associated with the remediation. Ra293. Included in each quarterly report are the total monthly costs and activities associated with the remediation of the Site. Ra011-180. Such activities include, but are not limited to, (1) monthly project management; (2) the procuring of contractors; (3) preparation and submittal of documents as required by DEP; (4) sampling; (5) evaluation of investigatory data; (6) evaluation of remedial alternatives; (7) development of remedial strategy; (8) remedial actions; and (9) monitoring of groundwater to assess the efficacy of the remedial action. Ibid. The most recent quarterly report delivered to SATEC was the 3Q2024 Quarterly Report. Ra177-80.

Honeywell and its environmental consultants also participated in several meetings with SATEC to discuss different aspects of the remediation. For example, in 2010, CH2M conducted a site reconnaissance visit with SATEC to discuss field equipment staging locations and scheduling. Ra027. In July 2011,

CH2M met with SATEC to discuss the initial investigation data. Ra187. In the summer of 2012, Honeywell's remediation manager, Helen Fahy ("Ms. Fahy") met with SATEC to discuss investigation results and remedial alternatives. Ra294. SATEC did not raise any objections to the remedial process during this meeting, or object to any of the costs expended by Honeywell. Ibid. In the Second Quarter of 2013, Ms. Fahy met with SATEC again. Ibid. This time the purpose of the meeting was to discuss the details regarding the installation of a vapor intrusion mitigation system and any impact it may have on the aesthetics of SATEC's building. Ibid.

In Spring 2016, Ms. Fahy met with principals from SATEC at SATEC's office to discuss Honeywell's proposed remedial action. Ra294. During this meeting, Ms. Fahy provided a PowerPoint Presentation outlining the proposed remedial approach. Ibid. The PowerPoint Presentation identified the source area of the contamination, the remedial approach to conduct groundwater injections, and pre- and post-injection activities, and provided a preliminary schedule for conducting the injections. Ibid. Injections must be scheduled well in advance, which requires substantial and meticulous preparation to ensure safety, effectiveness, and compliance with applicable DEP regulations. Ra243. The PowerPoint Presentation also expressly stated "**that additional injections may be required in order to remediate the Site**." Ra294 (emphasis added). At the

conclusion of this meeting, SATEC's Chairman and Managing Member Daniel Branover represented that he understood the remedial process, comparing it to "feeding bugs with steroids." Ibid. No one from SATEC in attendance objected to the remedial strategy or objected to any of the costs of remediation at any point during this meeting. Ibid.

On March 31, 2017, Honeywell sent a letter to SATEC enclosing CH2M's RIR and offering to answer any questions or provide further information upon request. Ra294-95. SATEC did not ask for any additional details or additional clarification regarding the findings of the RIR. Ra295.

In 2018, Honeywell provided a remediation status report to SATEC, which described the 2016 injections in detail and noted that the groundwater data was being evaluated. Ra187. On June 7, 2023, Honeywell contacted SATEC via email to request a meeting to discuss the need for additional injections. Ra295. Attached to the email was another PowerPoint Presentation regarding the next steps required for the groundwater component of the remediation, which noted the need for additional injections to address groundwater contamination at the Site. Ibid. SATEC never responded to this email. Ibid.

SATEC's Failure to Cooperate & the ACO with DEP

Beginning in 2022, after Honeywell's counsel had requested SATEC's signature on remediation documents detailed below, and after Honeywell had already spent millions of dollars on the investigation and remediation, SATEC expressed its displeasure to Honeywell regarding the pace of the cleanup and the remedial approach. Aa35. In April 2022, Honeywell provided deed notices to SATEC and requested that they be executed to complete the remediation at the Site. See Ra295. SATEC failed to return signed deed notices, despite its obligation to do so under Section 3.7 of the Agreement. Ibid.

On September 15, 2022, Honeywell's counsel sent a letter to SATEC reiterating Honeywell's request that SATEC execute the deed notices as required by the Agreement. Ra207-09. Instead of executing the deed notices, SATEC's counsel sent a letter to Honeywell's counsel on November 14, 2022, stating SATEC planned to engage its own environmental consultant to review the remedial strategy and schedule, approximately thirteen (13) years after the cleanup had commenced. Aa35.

On April 3, 2023, nearly a year after its first request, Honeywell's counsel sent another letter to SATEC's counsel requesting that SATEC review and execute the deed notices, notifying SATEC that it must sign the necessary soil and groundwater RAPs for the Site, and communicating to SATEC that its delay

in executing the documents was placing Honeywell at risk of missing the mandatory remediation deadline. Ra233-37. To date, SATEC has failed to return executed deed notices or RAPs to Honeywell in violation of the Agreement. See Aa9 (requiring SATEC to execute and permit the recording of deed notices); Aa7 (requiring that the parties coordinate regarding submissions to DEP).

In July 2023, after Jacobs had already submitted its Discharge to Groundwater Permit request to DEP for approval to conduct further injections, Honeywell received a letter from Kevin Stattel ("Mr. Stattel"), an environmental consultant with Gibson & Stattel Environmental, Inc. ("G&S"). Aa38. The letter explained that SATEC had retained G&S[7] to conduct a peer review of the cleanup performed to date. Ibid. G&S opined in the letter that it disagreed with the agreed upon remedial action for the Site. Ibid.

On August 21, 2023, DEP approved Honeywell's request to conduct the next round of groundwater injections at the Site. Ra238. Two weeks later, SATEC's counsel sent a letter to Judge Epstein asserting that Honeywell had breached the Agreement and requested mediation. Aa42. The letter did not

[7] Mr. Stattel is not the LSRP retained for the Site. Pursuant to the SRRA, only the designated LSRP has the authority to make decisions concerning the remediation of a contaminated site. N.J.S.A. 58:10C-14.

identify a specific provision of the Agreement that was purportedly breached. Ibid.

On October 11, 2023, Honeywell's LSRP and environmental consultant met with G&S to discuss the status of the remediation. Ra295. During the meeting, the parties agreed that Honeywell's remedial approach, which was approved by DEP, was sufficient and satisfied all DEP remedial requirements. Ibid. Further, all participants agreed that urgent action needed to be taken in order to meet DEP's mandatory remediation deadline. Ibid.

On April 16, 2024,[8] less than a month before the mandatory remediation deadline, Honeywell's environmental consultant received two letters from G&S. Aa44, 46. The first letter to Honeywell provided a summary of the topics discussed at the October 11, 2023 meeting and, contrary to Mr. Stattel's position at the meeting, noted that G&S disagreed with the remedial approach. Aa44. The second letter provided a proposal to conduct additional soil and groundwater sampling at the Site. Aa46. Mr. Stattel's position in the letters differed substantially from his position at the October 11, 2023 meeting, where he concurred that groundwater injections were an appropriate environmental remedy for the Site. Ibid. The letters are also inconsistent with SATEC's prior

[8] Despite receiving the letters over a month later, the letters are dated March 15, 2024.

environmental consultants' investigatory findings, which concluded that injections are the proper environmental remedy for the contamination present at the Site. Ra009.

On April 18, 2024, Honeywell's counsel, in compliance with the Access Statute and DEP regulations, requested access to the Site via a letter that was sent via certified mail to SATEC's Counsel ("Initial Request"). Ra244-50. The Initial Request included a detailed scope of work for the activities required to be performed at the Site, proposed terms for site access, a site map indicating the area for which access is needed, and an access agreement to grant Jacobs permission to *inter alia*, install monitoring wells and conduct groundwater injections. Ibid. The Initial Request explained that this work would take approximately three to four weeks. Ibid. The Initial Request made clear that SATEC was required to respond within thirty (30) days of receipt of the letter. Ibid. The Initial Request additionally attached the RAP application forms for SATEC's signature. Ibid.

On August 6, 2024, Honeywell's counsel, in compliance with the Access Statute and DEP regulations, sent a second letter via certified mail ("Second Request") to SATEC's counsel again requesting access to the Site. Ra251-55. The Second Request reiterated that Honeywell needed access to the Site to install monitoring wells and conduct groundwater injections and enclosed the

Initial Request and its attachments. Ibid. Again, Honeywell requested that SATEC respond within thirty (30) days of receipt of the letter and requested that SATEC endorse the RAP application forms. Ibid. SATEC failed to execute the access agreement.

Between August 13, 2024 and September 10, 2024, Honeywell continued to communicate with SATEC regarding its requests for access and its overall remedial strategy for the Site. Ra273. During these exchanges, Ms. Fahy provided clarification regarding the work at the Site, noting that quarterly updates had been provided to SATEC, and offered to discuss the remediation efforts further. Ibid. No response was ever received from SATEC. Ibid. On November 15, 2024, SATEC sent Honeywell an email attaching results from G&S's environmental investigation, which included solely analytical results and did not include a narrative report or a proposal for an alternative remedial strategy. Ra262.

As a result of SATEC's refusal to cooperate, specifically by refusing to grant Honeywell access, execute the RAPs, and sign the required deed notices, Honeywell was not able to meet DEP's mandatory remediation timeframe deadline. Ra276. Accordingly, Honeywell was obliged to enter into an ACO with DEP, incurring a civil penalty of $2,000.00 and additional cleanup costs. Ra274-80. Under the ACO, Honeywell is required to complete the remediation

by 2030 **with no extensions**. Ra276. Due to SATEC's refusal to respond to Honeywell's requests and execute or negotiate an access agreement, Honeywell was required, by the Access Statute and DEP regulations, to seek an access order from the Superior Court via a summary action, which it filed on February 3, 2025.

STANDARD OF REVIEW

A trial court's legal determinations are reviewed de novo. Dempsey v. Alston, 405 N.J. Super. 499, 509 (App. Div.), certif. denied, 199 N.J. 518 (2009); Ross v. Lowitz, 222 N.J. 494, 504 (2015). Accordingly, when a trial court's decision turns on a question of law, such as statutory interpretation, the decision is subject to plenary review. Saccone v. Bd. of Trs. of Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014); see also Manalapan Realty, L.P. v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). Likewise, "[t]he interpretation and construction of a contract is a matter of law for the trial court, subject to de novo review on appeal." Cumberland Farms, Inc. v. New Jersey Dep't of Env't Prot., 447 N.J. Super. 423, 438 (App. Div.), certif. denied, 229 N.J. 149 (2017) (citing Fastenberg v. Prudential Ins. Co. of Am., 309 N.J. Super. 415, 420 (App. Div. 1998)). Accordingly, "[d]e novo review applies when appellate courts review determinations about the enforceability of . . . arbitration agreements." Kernahan v. Home Warranty Administrator of Florida, Inc., 236

N.J. 301, 316 (2019) (citing Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013)).

ARGUMENT

POINT I

THE TRIAL COURT'S MAY 13, 2025 DECISION STAYING THE MATTER HAS PRECLUDED HONEYWELL FROM ADHERING TO ITS STATUTORY AND CONTRACTUAL OBLIGATIONS AND IS IN CONFLICT WITH THE TRIAL COURT'S APRIL 4, 2025 ORDER WHICH GRANTED HONEYWELL'S SUMMARY ACTION IN ITS ENTIRETY (Aa64)

The instant appeal arises from a summary action filed by Honeywell pursuant to the Access Statute to obtain access to the Site to complete its cleanup, as well as a non-germane cross-motion to compel arbitration filed by SATEC in response to Honeywell's application. Summary proceedings have "the salutary purpose of swiftly and effectively disposing of matters." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:67-1 (2025). Accordingly, "[t]he inclusion of issues that require plenary consideration is inimical to the design of the rule. **It is for this reason that no counterclaim or cross-claim may be asserted without leave of cour**t." Perretti v. Ran-Dav's Cnty. Kosher, Inc., 289 N.J. Super. 618, 623 (App. Div. 1996) (emphasis added). This is chiefly because "[t]he aim of a summary proceeding is to expedite the litigation." Cnty. of Bergen v. S. Goldberg & Co., 39 N.J. 377, 380 (1963).

Pursuant to the Access Statute, if good-faith efforts to obtain access are unsuccessful, the PRCR **shall seek an order** from the court directing the property owner to grant reasonable access to the property and the court may proceed in a summary manner. N.J.S.A. 58:10B-16(a)(1); see also N.J.A.C. 7:26C-8.2(d) (directing the PRCR to initiate and **rigorously pursue** an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access). Thus, Honeywell is required to "take all appropriate actions . . . to obtain access to property . . . which is necessary to implement the remediation." N.J.A.C. 7:26C-8.2(b).

In adjudicating a summary action filed pursuant to the Access Statute, the trial court is afforded limited discretion and is required to **promptly issue an order** for access so long as access is "reasonable and necessary" to **remediate the contamination**. N.J.S.A. 58:10B-16(b)(2). The Access Statute makes clear that unless the trial court finds that there is "good cause shown," non-germane issues are not permitted to be joined with an action that are unrelated to the right of access. N.J.S.A. 58:10B-16(b). "The presence of an applicable department oversight document [(i.e., an ACO)] or a remediation obligation pursuant to law involving the property for which access is sought shall constitute **prima facie** evidence sufficient to support the issuance of an order." Ibid. (emphasis added).

In accordance with the statutory and regulatory requirements, Honeywell filed a one-count Verified Complaint and OTSC to obtain access to the Site to complete its environmental cleanup. On April 4, 2025, after hearing oral argument from the parties, the trial court issued an Order granting Honeywell's summary action in its **entirety**, finding that Honeywell has a legal right under the Access Statute to access the Site to remediate the contamination. Aa60. As part of the relief sought by Honeywell in its summary action, Honeywell requested access for the purpose of "installing monitoring wells and **conducting groundwater injections** . . . ." Aa108 (emphasis added). Despite the trial court's ruling that it granted all the relief sought by Honeywell in its April 4th Order, SATEC has taken the nonsensical position that the April 4th Order permits Honeywell's environmental consultants to access the Site, but **not for the purpose of conducting remediation**. Ra283. As SATEC is aware, Honeywell's sole purpose for filing the summary action under the Access Statute was to obtain access to the Site to conduct remediation. See Aa108. As part of its application to conduct remediation, Honeywell sought, *inter alia*, to install monitoring wells and conduct additional groundwater injections pursuant to the DEP-approved Discharge to Groundwater Permit. Ibid. SATEC's position that the trial court merely granted Honeywell access to the Site but precluded

Honeywell from conducting any environmental remediation activities at the Site is illogical, and a blatant violation of the trial court's April 4th Order.

On May 13, 2025, the trial court stayed the matter pending resolution of the arbitration, thereby preventing Honeywell from accessing the Site to complete its next round of injections and further delaying Honeywell's ability, as the PRCR, to remediate the Site as required by the Agreement, environmental laws and regulations and the ACO with DEP. Aa64. While the trial court clarified in its subsequent May 23rd Order that "the May 13, 2025 Order did not stay the April 4, 2025 Order . . . ," the trial court's May 13th Order has effectively stayed Honeywell's right to access the Site to complete the remediation until the arbitration is completed. See Ra304. Due to the stay issued by the trial court, SATEC has taken the untenable position that although the relief sought by Honeywell was granted in its entirety, Honeywell is precluded from accessing the Site to conduct remediation. Ra283. At this juncture, Honeywell is stuck between a rock and a hard place. On the one hand, the trial court states that the April 4th Order is in full force and effect. Ra304. Yet, on the other hand, the trial court has made clear that Honeywell is precluded from making any further applications to enforce the April 4th Order until the arbitration is resolved. See Aa64. These conflicting directives have resulted in an impasse which must be addressed by the Court.

This conundrum has been compounded further by the fact that the parties are currently in arbitration before Judge Epstein regarding whether any costs expended by Honeywell for the cleanup do not qualify as "Approved Costs of Remediation" as defined in Section 2.1 of the Agreement. As determined by the arbitrator and the trial court, this is the sole issue currently being arbitrated, which has always been Honeywell's position and which SATEC has now tacitly acknowledged itself by actively participating in the arbitration. It is also unclear what harm SATEC would suffer by permitting Honeywell access to the Site to conduct the next round of injections, while any disputes over cleanup costs are resolved by Judge Epstein.[9] Allowing access to the Site also does not prejudice any claims SATEC wishes to make with respect to breach of the Agreement, however unjustified they may be.

The trial court's May 13th Order staying the matter is inconsistent with the controlling law and DEP regulations which make clear that the Superior Court of New Jersey has exclusive jurisdiction over disputes concerning access to contaminated sites and that the sole issue to be decided in these summary proceedings is whether the PRCR has a right to access the contaminated property

[9] In fact, it is Honeywell that is at risk if the injections proceed and Judge Epstein later determines that the costs of the injection program are not Approved Costs of Remediation. The worst that can happen to SATEC is that it will have a cleaner property.

to investigate and/or remediate hazardous substances. See N.J.S.A. 58:10B-16. The trial court's May 13th Order is also in conflict with its April 4th Order which granted Honeywell's application in its entirety. The trial court's May 13th Order has improperly curtailed Honeywell's contractual right to complete the cleanup and has put Honeywell at risk of violating its legal obligations to DEP under the ACO. If the trial court's ruling is left undisturbed, it could set a perilous precedent, as it undermines the purpose of the Access Statute and may encourage property owners to assert – however illogically – that a court order issued to a PRCR pursuant to the Access Statute is only for access and not for remediation. While the Access Statute permits a court to "impose reasonable conditions as part of the access order," no such action was taken here as Honeywell's application was granted in its **entirety**. N.J.S.A. 58:10B-16(b). The types of limiting conditions that are identified in the Access Statute as generally appropriate relate largely to minimizing impacts to the property. Ibid. If the trial court intended to only allow Honeywell access to the Site, but not to conduct injections, it could have distinguished what relief was being granted and what relief was being denied in the actual Order itself. This is precisely what the trial court did regarding SATEC's cross-motion to compel arbitration, stating that it is "ORDERED that Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to issues of access, and GRANTED in part with

respect to those matters explicitly provided for in the Settlement Agreement." Aa60. Thus, Honeywell's right to access the Site under the Agreement and New Jersey law to complete the cleanup should not be halted until the arbitration has concluded. As noted above, it is unclear, and SATEC makes no mention of, how granting access to complete the injections would prejudice SATEC. SATEC would not suffer any harm by allowing Honeywell to conduct the next round of injections while simultaneously arbitrating any dispute over Approved Costs of Remediation. Additionally, SATEC's contractual claims against Honeywell – however fanciful they may be – can still proceed whether or not Honeywell moves forward with the additional injections. Accordingly, the stay must be lifted.

A. Honeywell Has Demonstrated that Access to the Site is Both Reasonable and Necessary to Remediate Contamination (Aa64)

The Access Statute provides that a PRCR may access a contaminated site if access is both "reasonable and necessary to remediate contamination." N.J.S.A. 58:10B-16(b). The term "remediate" is defined broadly under N.J.S.A. 58:10B-1 to -31. The statute makes clear that remediation includes "all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of contaminants . . . ." N.J.S.A. 58:10B-1.

In its April 4th Order, the trial court correctly determined that, based on the black letter law and record evidence, Honeywell demonstrated that access to

SATEC's property was both "reasonable and necessary to remediate contamination." Aa62. The trial court began its analysis by explaining that based on the evidence presented it was undisputed that the Site was contaminated and that Honeywell was the PRCR for the Site. Ibid. Further, the trial court found that as a matter of law "N.J.S.A. 58:10B-16(b)(2) permits the issuance of an Order granting access to the subject Property that is reasonable and necessary to remediate contamination." Ibid. As a result, the trial court found that Honeywell has a right to access the Site to conduct remediation, explaining that because "[Honeywell] is merely seeking access to the Property to perform environmental investigations and **remediations**[[10]] pursuant to their responsibilities under the Settlement Agreement, and same is not required to be arbitrated under the terms of the Settlement Agreement, the Court is satisfied that [Honeywell's] application is proper . . . ." Aa63 (emphasis added). Thus, the trial court correctly held that it was "satisfied that [Honeywell] has established that access to the [Site] is reasonable and necessary **to remediate the cVOCs**." Aa63 (emphasis added).

[10] SATEC misleadingly asserts in its brief that "the Court granted Honeywell access to SATEC's Property . . . only for 'environmental testing' and not as to 'environmental remediation.'" Brief on Behalf of Appellants, SATEC, Inc. and SATEC Real Estate Holding, LLC ("Appellant's Brief") at 4-5. As the April 4th Order demonstrates, SATEC's assertion is factually inaccurate and unsupported by the black letter law.

The trial court also reached the same conclusion in its May 13th Order and May 23rd Order. In its May 13th Order, the trial court noted that "the issue of access was argued in a summary proceeding on April 1, 2025 and this Court issued an Order granting [Honeywell's] request for access by way of an Order on April 4, 2025." Aa73. The trial court provided similar reasoning in its May 23rd Order, stating that "the Court agrees that [Honeywell] is responsible for the remediation of the Property . . ." and noted that the "April 4, 2025 Order has not been modified, and **the relief granted therein stands** . . . ." Aa71 (emphasis added).

Based on its status as the PRCR, Honeywell has regularly accessed the Site with SATEC's permission "to investigate, clean up, or respond to any known, . . . contaminants." N.J.S.A. 58:10B-1. Indeed, for close to twelve years, Honeywell was provided with unfettered access to the Site by SATEC to remediate the contamination. See, e.g., Ra027, 049, 055, 288. It wasn't until late 2022 (and long after the remediation costs exceeded the $2 million threshold) that SATEC began to attempt to renegotiate the Agreement by refusing to permit Honeywell access to the Site to complete the remediation. Aa22.

As SATEC's prior course of conduct demonstrates, Honeywell has a contractual and legal obligation to remediate the Site subject to the jurisdiction and oversight of Honeywell's LSRP, which is not possible without being able to

access the Site. Notably, even after this litigation commenced, Honeywell's environmental consultants still regularly access the Site, with SATEC's permission, to conduct remedial activities related to the operation and maintenance of the SSDS. Ra288. SATEC's conduct is demonstrative that it understands that it has an obligation under the Agreement to permit Honeywell access to the Site to conduct environmental remediation. SATEC's prior conduct in approving of and allowing Honeywell access to the Site to conduct investigatory and remedial activities prior to 2016 also belies its unsupported assertion that Honeywell conducted no remediation at the Site until 2016. See Appellant's Brief at 3. While the first round of in-situ injections substantially reduced the cVOC concentrations in the groundwater, further injections are now required to complete the remediation. Ra289. Honeywell's access request is both reasonable and necessary in order to satisfy its remedial obligations to SATEC and DEP. Moreover, the ACO entered into by Honeywell with DEP obligating it to conduct remediation at the Site constitutes "prima facie evidence sufficient to support the issuance of an [access] order." N.J.S.A. 58:10B-16(b). Accordingly, Honeywell has demonstrated that it satisfied the statutory criteria that access to the Site is both reasonable and necessary to remediate the contamination present at the Site.

B. Honeywell Engaged in Good Faith Efforts to Reach an Agreement with SATEC to Access the Site (Aa64)

The Legislative intent in enacting the Access Statute was to "ensure that the public health and safety and the environment are protected from the risks posed by contaminated sites and that strict standards coupled with a risk based and flexible regulatory system will result in **more cleanups** . . . ." N.J.S.A. 58:10B-1.2 (emphasis added). To achieve this objective, the Access Statue directs any party undertaking the remediation of a contaminated property to seek an order from the Superior Court if after good faith efforts, it fails to reach an agreement with the property owner concerning access to the property. N.J.S.A. 58:10B-16(a)(1). The DEP's regulations also require the PRCR to be proactive in obtaining access to contaminated sites to conduct cleanups, noting that if a property owner does not grant access to the PRCR, then "the PRCR **shall initiate and rigorously pursue** an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access." N.J.A.C. 7:26C-8.2(d) (emphasis added).

As the record demonstrates, Honeywell engaged in good faith efforts to reach an Agreement with SATEC regarding access to the Site. Honeywell has a legal and contractual obligation to remediate the Site and – after SATEC denied access to Honeywell contrary to its obligations under the Agreement – Honeywell was required under the Access Statute to initiate the action that led

to the instant appeal. Honeywell's summary action was only filed after multiple attempts to access the Site were unsuccessful, including the Initial Request, Second Request, and numerous subsequent communications between August and September 2024. Aa114-15; Ra273.

Since commencing the cleanup in 2010, Honeywell has provided regular updates to SATEC regarding the remedial status of the Site. Ra293-96. These status updates have been communicated to SATEC via quarterly reports, in-person meetings, letters, and emails. Ibid. Nor was it a secret that multiple rounds of injections would be required to complete the remediation. Indeed, Honeywell's remedial action proposal was presented to SATEC in June of 2016. Ra294. During that presentation, Honeywell's environmental consultant met with the principals from SATEC at SATEC's office and provided a PowerPoint Presentation which outlined Honeywell's proposed remedial approach. Ibid. The PowerPoint Presentation contained slides which expressly noted that additional injections may be required. Ibid. At no point during the meeting did SATEC object to the proposed remedial action. Ibid. As a result, in September and October 2016, SATEC provided access to the Site in order for Honeywell to conduct the first round of injections. Ibid.

Once Honeywell became aware that SATEC was hesitant about proceeding with a second round of injections for the first time in 2022,

Honeywell attempted to alleviate SATEC's concerns by sending its environmental consultants to meet in person with G&S to discuss Honeywell's remedial approach, which was approved by DEP. Ra295. Honeywell also communicated to G&S the approaching mandatory remediation deadline and stressed how important it was to obtain access to the Site in order to satisfy DEP's regulatory requirements. Ibid. Only after it became clear that SATEC would not permit Honeywell access to the Site did Honeywell begin the process of filing a summary action pursuant to the Access Statute.

In adherence to the statutory and regulatory requirements, Honeywell requested access to the Site twice, providing a detailed scope of work, proposed terms, a site map, and a draft access agreement. Aa114-15. Between the months of April and September 2024, Honeywell engaged in significant efforts to obtain access from SATEC to conduct the next round of groundwater injections, with repeated email and letter communications to SATEC to attempt to gain access to the Site. Aa114-15; Ra273. SATEC ignored or denied Honeywell's requests. Ra273. After attempting to resolve the issue in good faith, Honeywell was left with no other choice but to file a complaint in the Superior Court as required by the Access Statute and DEP regulations. Aa111. In doing so, the trial court rightfully found that Honeywell required access to the Site to conduct the necessary remediation, i.e., groundwater injections. Aa60.

Only one decision exists in New Jersey, PPG Industries, Inc. v. Mid-Newark LP, No. C-137-15 (N.J. Super. Nov. 18, 2016), which addresses whether a party negotiated in good faith for access to another's property to conduct remediation. In PPG Industries, Inc., the PRCR was the owner and operator of a chrome production facility, which used hazardous substances in its manufacturing processes. Id. at 3. As part of its manufacturing operations, hazardous substances were discharged at its facility which migrated to off-site properties. Ibid. The discharges resulted in the PRCR entering into an ACO with DEP, which obligated it to, *inter alia*, conduct sampling of nearby properties for contamination. Id. at 4. At one of those properties, the property owner and PRCR were not able to negotiate an access agreement. Id. at 5. When the PRCR sought a court order to obtain access, the property owner asserted that the PRCR had not acted in good faith because the PRCR did not solicit moving cost estimates or seek information regarding the property owner's business operations to determine the scope of alleged disruption to its operations. Id. at 8. The Chancery Division held that the PRCR had made good faith efforts to reach an agreement on access by engaging in "substantive negotiations" to conduct the remediation following the soil sampling, which showed the property was contaminated, and that an access agreement had not been reached "despite the efforts of both parties." Ibid.

Here, Honeywell has more than satisfied the criteria in PPG Industries. Honeywell has entered into an ACO with DEP and has a contractual obligation to complete the cleanup of the Site. As the Chancery Division stressed in PPG Industries, "while there is a dispute about whether plaintiff ever attempted to negotiate a relocation of the defendants, **nothing in the statute** requires plaintiff to relocate the defendant, or attempt **to meet every requirement demanded by the defendants in negotiation**." No. C-137-15 at 8 (emphasis added). This Court should similarly find that Honeywell has engaged in good faith efforts and has satisfied the statutory criteria for the issuance of an Order permitting it to access the Site to complete the remediation. Accordingly, Honeywell requests that this Court lift the trial court's stay so that the cleanup may proceed.

C. The Trial Court Erred by Allowing SATEC to Join Non-Germane Issues to a Summary Proceeding (Aa64)

The summary action rule is designed to accomplish "the salutary purpose of swiftly and effectively disposing of matters which lend themselves to summary treatment.'" MAG Ent. LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 551 (App. Div. 2005) (quoting Depos v. Depos, 307 N.J. Super. 396, 399 (Ch. Div. 1997)). Summary proceedings have the primary aim of expediting litigation. Cnty. of Bergen, 39 N.J. at 380. Summary actions filed pursuant to the Access Statute are appropriately the subject of this rule. See, e.g., Beazer East, Inc. v. Morris Kearny Assocs. Urban Renewal, LLC, No. A-

0756-22 (App. Div. Nov. 14, 2024) (slip op. at 1) (finding that an action by a PRCR to obtain access to a contaminated property to conduct remediation should be brought by way of an OTSC for the purpose of promptly adjudicating the dispute between the parties). For the specific purpose of narrowing the scope of claims, the Access Statute expressly states that:

> Unless the court otherwise orders for notice and for good cause shown, an action for an access order shall not be joined with non-germane issues against the owner of the property for which access is sought or other person who maybe liable for the contamination. Non-germane issues shall include, but not be limited to, issues concerning contribution, treble damages, or other damages involving either the contamination or the remediation.

N.J.S.A. 58:10B-16(b). The Access Statute, as its name implies, is concerned **solely** with issues related to obtaining entry to contaminated properties for the purpose of conducting environmental investigation and remediation. Ibid. Because the Access Statute requires a remediating party to make an application to the Superior Court if it cannot come to an agreement with the property owner to expeditiously complete its environmental investigation and/or remediation, the Legislature intentionally precluded non-germane issues from being addressed in a summary action for an access order. N.J.S.A. 58:10B-16(b).

SATEC's cross-motion to compel arbitration asserted several claims unrelated to Honeywell's access to the Site, which is expressly prohibited under

the statute. See N.J.S.A. 58:10B-16(b). Specifically, SATEC's cross-motion disputed Honeywell's remedial strategy and costs. Aa62-63. Moreover, SATEC's Answer and Counterclaims asserted breach of contract claims and demanded arbitration purportedly due to Honeywell's failure to abide by the Agreement's provisions regarding (1) advice and consent; (2) good faith; and (3) reasonableness with respect to its remedial obligations. Aa135-42. SATEC's non-germane claims should not have been considered by the trial court. Rather, once the trial court granted Honeywell's Verified Complaint and OTSC in its entirety and resolved the issue of access to conduct the next round of injections at the Site, SATEC was required either to seek leave of court in order to assert its claims with respect to the other provisions of the Agreement or file a separate action.

The trial court should not have permitted SATEC to join non-germane issues to a summary proceeding when the law is clear that such issues are barred from being asserted. See Perretti, 289 N.J. Super. at 623. Notably, SATEC continues to assert claims regarding the reasonableness of Honeywell's remedial strategy, arguing that Honeywell did not obtain consent from SATEC and contesting the scope of issues subject to arbitration under the Agreement. Appellant's Brief at 1. The Access Statute and the regulations implementing it are designed so there is no delay in required remediation. The purpose of New

Jersey's remediation laws is to ensure timely cleanups that minimize environmental harm. This is the reason why the Access Statute provides for a summary proceeding and precludes non-germane claims from being brought in the same case. Thus, the law is clear that SATEC should not have been permitted to assert these claims in the first place, and their inclusion in the instant litigation has complicated the issues in such a way as to prevent Honeywell from gaining access to the Site, despite its clear statutory and contractual right to do so.

POINT II

THE TRIAL COURT CORRECTLY DETERMINED THAT ONLY DISPUTES OVER APPROVED COSTS OF REMEDIATION ARE SUBJECT TO ARBITRATION (Aa64)

In the instant appeal, SATEC conveniently glosses over the plain and unambiguous language of the Agreement which demonstrates that the only issue subject to arbitration is disputes over whether any costs or expenses constitute "Approved Costs of Remediation," as defined in Section 2.1 of the Agreement. Unable to refute that the Agreement contains only a narrow and specific arbitration clause, SATEC now attempts to argue that the plain language in several other clauses of the Agreement was actually intended by the parties to have a different meaning than their ordinary meaning and is demonstrative of the parties' intent to arbitrate **any dispute** relating in **any way** to the remediation of the Site. To support this strained interpretation of the Agreement, SATEC

cherry picks words and phrases from other clauses that are unrelated to the dispute resolution procedure. Based on this cherry-picked language contained in other provisions of the Agreement, SATEC argues that that the Court needs only to review the four corners of the document to arrive at its preferred conclusion that the scope of arbitration in the instant matter is extremely broad and includes **any dispute** related to remediation. Appellant's Brief at 40 (stating that the "Agreement is clear on its face"). To support this assertion, SATEC notes in its brief that trial court has never concluded that the Agreement is ambiguous. Id. at 51. SATEC then proceeds to undercut its own position by arguing that the Court should consider the assertions made[11] by SATEC's principal to ascertain the true intent of the parties. Id. at 39. Thus, it appears that SATEC wants to have it both ways.

However, it is axiomatic that the Agreement should be applied in accordance with its actual language, not SATEC's after-the-fact revision of that language. "A party that uses unambiguous terms in a contract cannot be relieved from the language simply because it had a secret, unexpressed intent that the language should have an interpretation contrary to the words' plain meaning."

[11] Since at least 2000, SATEC's counsel has represented SATEC, including in the settlement negotiations that resulted in the Agreement. Thus, any ambiguities should be construed against SATEC. See Roach v. BM Motoring, LLC, 228 N.J. 163, 174 (2017).

Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002). Indeed, it is a "long-settled principle[ ]" that a party to a contract "is bound by the apparent intention he or she outwardly manifests to the other party. It is immaterial that he or she had a different, secret intention from that outwardly manifested." Domanske v. Rapid–Am. Corp., 330 N.J. Super. 241, 246 (App. Div. 2000) (quoting Hagrish v. Olson, 254 N.J. Super. 133, 138 (App. Div. 1992)). Thus, the plain language of the Agreement governs this dispute.

SATEC's appeal relies on the false contention that issues not provided for in the Agreement are subject to arbitration. However, "[a] party cannot be required to submit to arbitration any dispute which he has not agreed to submit." Bleumer v. Parkway Ins. Co., 277 N.J. Super. 378, 408 (Law Div. 1994) (citing AT&T Technologies, Inc. v. Communication Workers of Am., 475 U.S. 643, 648 (1986)). The scope of arbitration and the duties of each party are dependent upon the agreement of the parties, who have a "right to stand upon the precise terms of their contract; the courts may not rewrite the contract to broaden the scope of arbitration or otherwise make it more effective." Duerlein v. New Jersey Auto. Full Ins. Underwriting Ass'n, 261 N.J. Super. 634, 639-40 (App Div. 1993).

In its effort to impermissibly expand the scope of arbitration beyond the limited dispute resolution process described in Section 2.4 of the Agreement,

SATEC paradoxically contends that the Agreement is unambiguous and self-explanatory yet simultaneously argues that a comprehensive review of the Agreement, considered alongside relevant background circumstances as detailed in the Certification of Daniel Branover ("Branover Certification"), supports the inclusion of additional issues within the ambit of arbitration. Appellant's Brief at 39. SATEC specifically states that a "holistic review" of the Agreement results in an expansion of the arbitration provision. Ibid. Yet, at the same time, SATEC argues that the Agreement "includes explicit reference to, and an agreement to be bound by, a defined arbitration procedure before Judge Epstein" and that at no point "did the Trial Court conclude that the Settlement Agreement was in any way ambiguous." Id. at 44-45, 51. Which one is it?

The law is clear and well-established that where a contract's terms are clear and unambiguous, a court must enforce those terms as written and **there is no room for construction**. See, e.g., Watson v. City of E. Orange, 175 N.J. 442, 447 (2003). SATEC's argument that external sources regarding the parties' intent should be considered here lacks legal basis and contradicts its own statements in its brief that the terms of the Agreement are clear and unambiguous. Appellant's Brief at 51. Accordingly, the Agreement itself is the only document this Court needs to review to determine the scope of arbitration.

SATEC contends that the Agreement provides it with a right to arbitrate four distinct areas of contractual disputes: (1) Approved Costs of Remediation; (2) SATEC's right to advice and consent; (3) SATEC's right to object to the remedial strategy; and (4) Honeywell's reasonableness in its remedial strategy. Appellant's Brief at 40-41. Even though SATEC has offered no factual or legal support for its contention that Honeywell breached the Agreement with respect to these issues, the plain language of the Agreement is clear that the only issue subject to arbitration is disputes related to Approved Costs of Remediation. Accordingly, the trial court was correct in its April 4th and May 13th Orders to only submit issues related to Approved Costs of Remediation to the arbitrator.

A. The Plain Language of the Agreement is Clear That the Only Issue Subject to Arbitration is Disputes Over Approved Costs of Remediation (Aa64)

When parties have agreed to arbitrate certain issues, the scope of such arbitration is dependent on the agreement between the parties. Cohen v. Allstate Ins. Co., 231 N.J. Super. 97, 101 (App. Div.), certif. denied, 117 N.J. 87 (1989). A "submission to arbitration is essentially a contract, and the parties are bound to the extent of that contract." Local 462, Intern. Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am. v. C. Schaefer & Sons, Inc., 223 N.J. Super. 520, 525 (App. Div. 1988). Arbitrability of a particular claim "depends not upon the characterization of the claim, but upon

the relationship of the claim to the subject matter of the arbitration clause." Wasserstein v. Kovatch, 261 N.J. Super. 277, 286 (App. Div. 1993). Accordingly, courts "**must look to the language of the arbitration clause** to establish its boundaries . . . ." Hirsch, 215 N.J. at 188 (emphasis added).

The Agreement's narrow arbitration clause, which is tellingly titled "***Disputes Concerning Approved Costs of Remediation***," explicitly states that:

> In the event of any dispute between the Parties **over whether any costs or expenses constitute Approved Costs of Remediation**, the Parties shall promptly confer in an effort to resolve their differences. If the Parties are unable to resolve any dispute following a reasonable opportunity for joint consultation, then any and every question, dispute, claim or controversy **concerning whether any costs or expenses constitute Approved Costs of Remediation** shall be finally and non-appealably resolved solely by retired New Jersey Superior Court Judge Mark Epstein. In the event that Mr. Epstein is unable or unwilling to serve as an arbitrator the Parties shall confer and select a replacement . . . .

Aa5 (emphasis added). As specified in the express terms of the Agreement's arbitration clause, only those issues with respect to Approved Costs of Remediation are arbitrable. The language of the arbitration clause is clear and narrow in scope, and the Court need not and should not look to any other provision of the Agreement – or a self-serving post-hoc certification – to establish its boundaries. Hirsch, 215 N.J. at 188.

SATEC's bald assertions in its brief that "the Parties intended and agreed to arbitrate any dispute with Judge Epstein" and that "the parties would be bound

to arbitrate a variety of discrete but interrelated issues" are not supported by the plain language of the Agreement. Appellant's Brief at 46, 50. This likely explains why SATEC provided no citations in its brief to support its meritless contention. Ibid. From even a cursory review of the clauses SATEC cites to, it is readily apparent that the Agreement does confer a broad right to arbitrate "any dispute" or "a variety of discrete but interrelated issues" in the Agreement. See Ibid. Rather, each of these clauses has a specific purpose vastly different from the other. Section 3.1's purpose is to outline the submission of certain documents to DEP. Aa6. As explained above, this process has since changed with the enactment of the SRRA.

The purpose of Section 3.2 is to allow Honeywell to manage the cleanup with minimal interference from SATEC, while making clear that the parties would still have the ability resolve any issues related to the costs of remediation, as outlined in the arbitration clause. Aa7. While this section does contain a reference to dispute resolution, it merely refers to the right to arbitrate "as hereinbefore set forth." Ibid. Of course, the only section that is "hereinbefore set forth" in the Agreement regarding dispute resolution is Section 2.4, which solely references disputes over Approved Costs of Remediation. This clause demonstrates that Honeywell's ability to manage the cleanup independently of SATEC was a factor in its decision to enter into the Agreement. Accordingly,

the language in Section 3.2 specifically restricts the period during which Honeywell was required to secure SATEC's consent regarding its approach to the cleanup process. Aa7.

As to Section 3.3, the purpose is to ensure that Honeywell keeps SATEC informed of the progress of the cleanup. Ibid. As discussed above, Honeywell has provided quarterly reports to SATEC since 2010. Nor is there any broad terminology in the Agreement's arbitration clause to suggest that any issues outside of Approved Costs of Remediation must be arbitrated. See Angrisani v. Fin. Tech. Ventures, L.P., 402 N.J. Super. 138, 149 (App. Div. 2008) (finding that terms such as "arising out of" or "relating to" indicate a broad agreement to arbitrate); see also RCM Techns., Inc. v. Constr. Servs. Assocs., Inc., 149 F. Supp. 2d 109, 112 n. 2, 113 (D.N.J. 2001) (comparing a broad arbitration clause which contained terminology such as "arising out of or relating to" with a narrow arbitration clause which did not include such language). Despite what SATEC erroneously contends, the dispute resolution provision does not provide for a broad right to arbitrate all issues. Appellant's Brief at 44 (stating that the four issues SATEC asserts, as well as other issues arising out of or related to those issues, must be arbitrated). As evidenced by the clear language of Section 2.4, the parties solely assented to arbitrate issues with respect to "Approved Costs of Remediation." The remaining issues that SATEC has raised are not arbitrable.

As SATEC points out in its brief, the settlement negotiations resulting in the Agreement lasted more than a year and all parties were represented by sophisticated counsel. Appellant's Brief at 45. Now, approximately 16 years after the Agreement was executed and after Honeywell has already spent millions of dollars on the cleanup, SATEC is requesting this Court to rewrite the Agreement to broaden the scope of arbitration. Surely, if the parties intended for the scope of arbitration to cover any dispute related to the remediation of the Site, they would have drafted the Agreement to reflect such intentions. See Bleumer, 277 N.J. Super. at 408.

The trial court and the arbitrator both reached the same conclusion. While SATEC contends that the trial court reached a different conclusion in its April 4th Order, this is a mischaracterization of the court's order. See Appellant's Brief at 37. The April 4th Order partially granted SATEC's cross-motion to compel arbitration "with respect to those matters **explicitly provided for in the Settlement Agreement**." Aa60 (emphasis added). As demonstrated above, the only matter subject to arbitration that is **explicitly** provided for in the Agreement is issues concerning Approved Costs of Remediation. Aa5.

In response to a motion in aid of litigant's rights filed by SATEC, where SATEC asserted that additional issues besides those provided for in the Agreement were subject to arbitration, the trial court clarified its prior ruling in

its May 13th Order and stated in no uncertain terms that the April 4th Order "did not provide that the parties are to resolve **ALL** other issues not related to access, but rather those issues specifically provided for in the Settlement Agreement which, upon review of the Settlement Agreement **applies only to Approved Costs of Remediation**." Aa72 (emphasis added). This holding was not *sua sponte*, but rather in direct response to SATEC's motion, which raised questions regarding what issues were subject to arbitration thereby requiring clarification from the trial court. After reviewing the trial court's May 13th Order, the arbitrator agreed that only issues with respect to Approved Costs of Remediation are subject to arbitration. Aa247. The Agreement's arbitration clause is clear that the parties only agreed to arbitrate issues regarding Approved Costs of Remediation. Accordingly, SATEC's arguments regarding disputes related to its right to advice and consent, its right to object, and the reasonableness of the remedial strategy, are without merit and should be disregarded by this Court.

B. Disputes Regarding SATEC's Right to Advice and Consent or to Object Under Sections 3.1 and 3.2 of the Agreement Are Not Subject to Arbitration (Aa64)

SATEC argues that disputes related to its right to advice and consent are subject to arbitration under Sections 3.1 and 3.2 of the Agreement, and that its right to object to Honeywell's remedial approach is arbitrable under Section 3.2 of the Agreement. However, neither clause even remotely suggests that such

disputes are subject to arbitration. Rather, Section 3.1 merely states that Honeywell must prepare and submit certain remediation documents with SATEC's advice and consent. Aa6. Specifically, Section 3.1 states that "Honeywell shall prepare and submit, with the advice and consent of [SATEC], one or more proposals (individually a "Proposed Remediation Plan" and collectively the "Proposed Remediation Plans") . . . ." Ibid. As detailed above, such remediation plans no longer exist after the enactment of the SRRA. Conspicuously absent from Section 3.1 is any language regarding a dispute resolution process. In fact, the words "arbitrate" or "dispute" are not even mentioned once throughout the entire section. Aa6. Aside from quoting Section 3.1 and stating that Honeywell has failed to submit such documents – which are no longer required to be submitted to DEP – SATEC does not engage in any discussion about why disputes under Section 3.1 are subject to arbitration, and rightly so. See Appellant's Brief at 42-43. Section 3.1 is devoid of any language requiring or even suggesting that disputes regarding SATEC's right to advice and consent are subject to arbitration. Aa6.

While Section 3.2 does reference arbitration, it only refers to it in the limited capacity as provided under the arbitration clause. Specifically, Section 3.2 refers to arbitration twice: (1) "[SATEC] shall not unreasonably withhold its consent, subject, nevertheless, to the Parties' right to arbitrate disputes pursuant

to the arbitration process **set forth in Section 2.4**;" and (2) after "Approved Costs of Remediation exceed $2,000,000 . . . Honeywell shall have sole discretion (subject, nevertheless, to a reasonableness standard, the Parties' right to arbitrate **as hereinbefore set forth** and Honeywell's express obligations and undertakings pursuant to this Agreement) regarding the manner in which it shall complete any remediation." Aa7 (emphasis added). Even though the remediation costs have well exceeded $2 million and SATEC's right to challenge the environmental remedy has ceased, each reference to arbitration in Section 3.2 explicitly notes that arbitration is confined to those issues defined in the Agreement, that is, issues related to Approved Costs of Remediation under Section 2.4. Accordingly, SATEC's no longer operative right to advice and consent, as well as its right to object to the remedial strategy, are not subject to arbitration.

C. Disputes Related to a "Reasonableness Standard" Under Sections 3.2 and 3.3 of the Agreement are Not Subject to Arbitration (Aa64)

SATEC's reliance on Section 3.2 to argue that the parties must arbitrate disputes regarding the reasonableness of the remedial strategy is likewise misplaced. In making this tenuous argument, SATEC appears to rely solely on the fact that Section 3.2 contains the following phrase: "subject, nevertheless, to a reasonableness standard," which is separated by a comma to a reference to

the parties' right "to arbitrate as hereinbefore set forth" i.e., the arbitration clause. SATEC's argument is without merit.

One of the principles of statutory construction is that "identical words used in different parts of the same act are intended to have the same meaning." Gustafson v. Alloyd Co., Inc., 513 U.S. 561, 570 (1995) (quoting Dep't of Revenue of Or. v. ACF Industries, Inc., 510 U.S. 332, 342 (1994)). As this Court has recognized, this same framework also applies to the interpretation of a contract, "particularly when the contract under consideration is so clearly the product of careful lawyering on both sides." Celanese Ltd. v. Essex Cnty. Improvement Auth., 404 N.J. Super. 514, 529 (App. Div. 2009).

Here, the phrase "reasonableness standard" is absent from the arbitration clause. While the word "reasonable" is mentioned once in Section 2.4, it is in the context of affording the parties a "reasonable opportunity for joint consultation" prior to submitting a dispute over whether any costs or expenses constitute Approved Costs of Remediation to Judge Epstein for arbitration. Aa5. While Section 3.3, titled, "*Coordination*," does not include any reference to the phrase "reasonableness standard," it does include the word "reasonable" twice. That clause states the following:

> Honeywell shall act, at all times, in a reasonable manner, and shall keep [SATEC] informed of all remediation activities, provide advance notice of any meetings with [DEP] or other governmental authorities relating to remediation of the Property, and afford

> [SATEC] an reasonable opportunity to participate in such meetings. The Parties shall promptly provide one another with copies of all reports, submissions, correspondence or other documentation submitted to, or received from, [DEP] or other governmental authorities relating to remediation of the Property.

Aa7. As the express language of Section 3.3 demonstrates, the use of the word "reasonable" in this clause has absolutely no connection to arbitration. Rather, the purpose of its insertion is to require Honeywell to keep SATEC apprised of its cleanup and to coordinate with SATEC regarding meetings with DEP.[12] Ibid. And that's precisely what Honeywell has done since commencing the cleanup. Indeed, since 2010, Honeywell has provided detailed quarterly reports to SATEC, which summarize the remedial status of the Site and the costs associated with the remediation. Ra293. Included in each quarterly report are the total monthly costs and activities associated with the remediation of the Site. Ra011-180. Honeywell has also participated in numerous meetings with SATEC over the years to discuss the coordination of the remediation. Ra294-96. As a result, the term "reasonableness" contained in Section 3.2 should be given the same meaning as it has in Section 3.3. As the plain language in the Agreement indicates, Honeywell and SATEC never agreed to arbitrate any of the issues set forth in Section 3.3, and this Court should not rewrite Section 3.3 to broaden the

[12] Due to the enactment of the SRRA, Honeywell's LSRP now oversees the cleanup and meetings with DEP are not usually required.

scope of arbitration. See Hirsch, 215 N.J. at 188 (citing Garfinkel, 168 N.J. at 132). Accordingly, Sections 3.2 and 3.3 do not require the parties to arbitrate the reasonableness of Honeywell's remediation strategy.

D. Assuming Arguendo That the Reasonableness of Honeywell's Remediation is Arbitrable, Honeywell Has Conducted the Remediation in a Reasonable Manner (Aa64)

As discussed above, even if the parties had agreed to submit issues of reasonableness to arbitration, which they did not, and even though issues of whether Honeywell was reasonable have no bearing on which issues are subject to arbitration under the Agreement, the record demonstrates that Honeywell has acted reasonably in conducting its remediation of the Site. See, e.g., Ra286-96. SATEC's claims regarding the reasonableness of the remedial strategy and any breach of the Agreement associated therewith are not germane to the issues on appeal, and Honeywell does not request that this Court reach such claims when they are irrelevant to deciding the issues at the subject of the instant appeal. Nonetheless, SATEC makes several assertions regarding the reasonableness of the remedial strategy that must be addressed. Despite the overwhelming evidence of Honeywell's extensive efforts and expenditures related to the cleanup, SATEC contends throughout its brief that Honeywell has acted unreasonably in performing the remediation. This argument is hard to square with the record.

Since the execution of the Agreement, Honeywell has actively conducted environmental investigation and remediation activities at the Site under the oversight of a LSRP and in accordance with all applicable environmental statutes and regulations. Under the SRRA, LSRPs are empowered to conduct environmental remediation. N.J.S.A. 58:10C-14. This independence is a key feature of the SRRA, which was enacted to "improve the efficiency and speed with which environmental sites are remediated." Des Champs Laboratories, Inc. v. Martin, 427 N.J. Super. 84, 99 (App. Div. 2012) (citing 43 N.J.R. 1077(a), 1078 (May 2, 2011)). Accordingly, LSRPs are entitled to deference in determining the strategy for remediating a property under the framework established by the SRRA. The mere fact that SATEC's current environmental consultant disagrees with the remedial strategy does not render Honeywell's approach – approved by DEP and at the time by SATEC – unreasonable. Only the LSRP retained for the Site is responsible for the oversight and ultimate approval of the investigation and remediation of this Site. See N.J.S.A. 58:10C-14.

While the cleanup has not yet been completed, Honeywell has made substantial progress towards obtaining regulatory closure. See Ra271, 288. Recognizing that the remediation process can be challenging, the parties included introductory language in the recitals section that expressly states

"[w]hile acknowledging that remediation of the Property may present difficulties and uncertainties . . ." before discussing the purposes of the Agreement. Aa2. This language is also consistent with SATEC's own environmental consultants' conclusions that due to the environmental conditions present at the Site, the ways in which the cleanup can be conducted were limited. As a result, the excavation, removal and disposal of contaminated soils has been determined to not be a practical remedy because "the physical removal of additional contaminated soil could endanger building structures, impede the operation of the site, would not address the groundwater contamination below the site, and likely would not be effective due to the groundwater level." Ra009.

As the record demonstrates, Honeywell has actively conducted environmental investigation and remediation activities at the Site under the oversight of a LSRP and in accordance with all applicable environmental statutes and regulations. As noted above, Honeywell has made significant progress towards obtaining regulatory closure. See Ra271, 288. Honeywell's LSRP, like SATEC's prior environmental consultants, has reasonably concluded that its remedial approach of enhanced ongoing reductive dechlorination is the most effective way to reduce the mass of cVOCs at the Site while creating a minimal degree of impact on the Site and SATEC's operations. Ra290.

As demonstrated throughout the pendency of this action, SATEC misunderstands the site remediation paradigm that the Legislature established with the enactment of the SRRA and the cleanup process generally. One glaring example of this is contained in SATEC's brief where it asserts that Honeywell did not undertake any environmental remediation until 2016. See, e.g., Appellant's Brief at 3. This statement is inaccurate and contradicts applicable law. Remediation is broadly defined as actions to "investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including as necessary, **the preliminary assessment, site investigation, remedial investigation, and remedial action**, provided, however, that 'remediation' or 'remediate' shall not include the payment of compensation for damage to, or loss of, natural resources." N.J.S.A. 58:10B-1 (emphasis added). Thus, SATEC's contention that Honeywell conducted no remedial activities until 2016 is unfounded as N.J.S.A. 58:10B-1 makes clear that the investigatory activities conducted **constitute remediation** under New Jersey law.

Another example is SATEC's insistence that Honeywell's cleanup of the Site must allow for unrestricted use in order to ensure that there would be no "diminution in value" to the Site "due to the ongoing soils and groundwater contamination." Appellant's Brief at 18. Yet the Agreement expressly provides that the environmental remedy would include the use of engineering and

institutional controls in the form of caps, deed notices, and groundwater classification exception areas, which run with the land in **perpetuity**. Aa9. As even a cursory review of the Agreement demonstrates, it was always contemplated that impacted soils would remain on the Site in accordance with a deed notice that is part of a restricted use remedial action. Aa2, 9. This same point holds true for the historic fill present at the Site. Ibid.

While SATEC repeatedly contends in its brief that Honeywell did not keep SATEC informed of the remedial status and acted unilaterally, this assertion is belied by the record evidence. See, e.g., Appellant's Brief at 44, 48. As discussed above, Honeywell and its environmental consultants regularly updated SATEC regarding investigatory and remedial activities at the Site, where SATEC provided its consent and approval. For years, Honeywell provided SATEC with quarterly updates; at no point did SATEC ever object to, challenge, or question these reports.

Perhaps most shocking is SATEC's contention that Honeywell **unilaterally** conducted the first round of injections at the Site without SATEC's consent. Appellant's brief at 44, 48. The process of conducting in-situ injections must be scheduled well in advance and requires substantial and meticulous preparation to ensure safety, effectiveness, and compliance with applicable DEP regulations. Ra243. To ensure SATEC was comfortable with this process, Ms.

Fahy met with SATEC's principal in Spring 2016 at SATEC's office to discuss the proposed remedial action. Ra294. In September and October 2016, Honeywell, with SATEC's consent, conducted the first round of in-situ injections at 52 locations across the Site. Ra270. Multiple rounds of post-injection groundwater sampling were then performed at the Site, first monthly, then quarterly, between 2016 and 2021 to confirm the stability and longevity of the remedial action. Ra271, 295. As the record demonstrates, SATEC's contention that Honeywell **unilaterally** conducted the remedial action at SATEC's property without its knowledge and consent is unfounded. Nor is it clear – and SATEC does not explain – how Honeywell could enter the Site without SATEC's knowledge and consent.

In accordance with Section 3.3, Honeywell has also consistently provided SATEC with copies of all environmental reports and remediation documents submitted to DEP. See, e.g., Ra288, 294-96. These documents made clear that multiple rounds of injections may be required. See Ra288. As noted above, the use of injections to remediate the cVOCs at the Site was approved by Honeywell, DEP, and SATEC. Ibid. While SATEC contends that "it was undisputed before the Trial Court that the Parties' joint intent was, in fact, to remove the

contaminated soils,"[13] the environmental reports in the record and the plain language of the Agreement do not support this contention. See Appellant's Brief at 52.

Lastly, SATEC erroneously contends that Honeywell has not conducted the remediation in a reasonable manner because it is purportedly in violation of DEP's Technical Regulations, stating: "[t]he Stattel Certification further confirms that natural attenuation of contamination is not possible with an active source . . . ." Appellant's Brief at 52. SATEC is misinformed.

The remedial action being implemented by Honeywell does not call for monitored natural attenuation. Ra289. Rather, Honeywell's LSRP determined that "the need to actively intervene to maintain the necessary rate and vigor of biodegradation makes this an active remedy. This is different from Monitored Natural Attenuation . . . which relies solely on natural processes, without any human intervention." Ibid. Only after the additional injections are successful in treating the residual contaminant mass and reducing groundwater concentrations will a monitored natural attenuation remedial approach be appropriate. Ra228.

[13] Notably, after the trial court stayed the litigation and the instant appeal had already been docketed, Honeywell received evidentiary materials that directly refute the assertions made in the Branover Certification regarding the parties' purported agreement to proceed with excavation instead of in-situ injections for the remedial action for the Site. If the Court wishes, Honeywell will file a motion to supplement the record pursuant to R. 2:5-5.

As stated above, SATEC's environmental consultant's opinion is of no consequence here. It is Honeywell's LSRP that must approve of the remedial strategy. See N.J.S.A. 58:10C-14. Thus, despite what SATEC contends, Honeywell has acted reasonably from the moment it commenced its cleanup of the Site and continues to do so today.

CONCLUSION

For the foregoing reasons, Honeywell respectfully requests that this Court reverse the trial court's stay on the litigation so that Honeywell may access the Site to conduct the next round of injections and affirm the trial court's decision that only issues related to Approved Costs of Remediation pursuant to Section 2.4 of the Agreement are subject to arbitration.

Respectfully submitted,

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By */s/ Dennis M. Toft*
DENNIS M. TOFT

Dated: October 27, 2025

SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-003317-24T2

HONEYWELL INTERNATIONAL INC. PLAINTIFF/RESPONDENT -v- SATEC, INC., SATEC REAL ESTATE HOLDING, LLC DEENDANTS/APPELLANTS	CIVIL ACTION ON APPEAL FROM ORDER ENTERED MAY 13, 2025 BY THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, UNION COUNTY C-000014-25 Sat Below: Hon. Robert J. Mega, P.J.Ch.

REPLY BRIEF ON BEHALF OF DEFENDANTS/APPELLANTS/ CROSS-RESPONDENTS, SATEC, INC. and SATEC REAL ESTATE HOLDING, LLC

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TABLE OF CONTENTS

TABLE OF JUDGMENTS/ORDERS

TABLE OF AUTHORITIES

Statutes

Administrative Codes

Court Rules

Treatises - None

APPENDIX TABLE OF CONTENTS

VOLUME I (Aa 1 – Aa 161)

Arbitrator's scope of
arbitration determination letter (dated 6/6/25) . . . . . Aa 247

PRELIMINARY STATEMENT

This appeal requires interpretation of the parties' 2009 Settlement Agreement, and whether or not Honeywell's course of conduct over the past sixteen (16) years (during which time Honeywell was required, by that Settlement Agreement, to fully environmentally remediate SATEC's real property), should be judged by the parties' designated Arbitrator or by the Superior Court. SATEC submits that the plain language of the Settlement Agreement mandates arbitration of those issues.

The Settlement Agreement resolved environmental litigation commenced in 2005 under Docket No. UNN-L-1372-05, and obliged SATEC and Honeywell to submit conflicts concerning the parties' rights and obligations under the Settlement Agreement to binding arbitration before the parties' agreed-upon Arbitrator.

Honeywell, as the party remediating SATEC's property, was charged under the Settlement Agreement to prepare one or more reasonable proposals for environmental remediation - "with the advice and consent of SATEC" - and to submit same to NJDEP for environmental remediation of both soils and groundwater at SATEC's property. SATEC asserts that Honeywell breached that and various other contractual obligations under the Settlement Agreement as, sixteen (16) years after the execution of the Settlement Agreement, SATEC's property is still saddled with soils and groundwater contamination. SATEC thus seeks adjudication of its

claims against Honeywell - four (4) distinct areas of contractual dispute - through binding arbitration.

The first arbitrable dispute involves so-called "Approved Costs of Remediation" under §2.4 of the Settlement Agreement, which provides that (emphasis added):

> "Disputes Concerning Approved Costs of Remediation: In the event of any dispute between the Parties over whether any costs or expenses constitute Approved Costs of Remediation, the Parties shall promptly confer in an effort to resolve their differences. If the Parties are unable to resolve any dispute following a reasonable opportunity for joint consultation, then any and every question, dispute, claim or controversy concerning whether any costs or expenses constitute Approved Costs of Remediation shall be finally and non-appealably resolved solely by retired New Jersey Superior Court Judge Mark Epstein." (emphasis added).

A determination by the Arbitrator of whether Approved Costs of Remediation reasonably exceed $2,000,000 impacts the rights of the parties to approve/consent to the remediation strategies proposed.

Settlement Agreement §3.2 provides the second area of arbitrable dispute (emphasis added):

> "Until the Approved Costs of Remediation exceed $2,000,000 **Honeywell shall obtain the consent of SATEC** concerning the manner in which the remediation shall be performed. SATEC shall not unreasonably withhold its consent, **subject, nevertheless, to the Parties' rights to arbitrate disputes pursuant to the arbitration process set forth in Section 2.4."**

Section 3.2 of the Settlement Agreement also identifies the third area of arbitrable dispute as (emphasis added):

> "Once the Approved Costs of Remediation exceed $2,000,000 (and SATEC is no longer obligated to contribute), Honeywell shall have sole discretion (**subject, nevertheless, to a reasonableness standard, the Parties' rights to arbitrate as hereinbefore set forth** and Honeywell's express obligations and undertakings pursuant to this Agreement) regarding the manner in which it shall complete any remediation."

Finally, Settlement Agreement §3.3 provides for the fourth area of arbitrable dispute number:

> Honeywell shall act, at all times, in a reasonable manner, and shall keep SATEC informed of all remediation activities, provide advance notice of any meetings with NJDEP or other governmental authorities relating to remediation of the Property, and afford SATEC an reasonable opportunity to participate in such meetings.

The record before the Trial Court is clear that Honeywell did not undertake any environmental remediation at the SATEC Property until 2016; Honeywell did not keep SATEC informed of and allow SATEC to participate in any NJDEP meetings or submissions; (c) nor did Honeywell seek SATEC's "advice and consent" as to any proposed method of environmental remediation (including the presently proposed remediation); and SATEC asserts that Honeywell's environmental proposals do not satisfy the reasonableness standard under the Settlement Agreement. SATEC therefore demanded arbitration of those issues.

PROCEDURAL HISTORY

On February 3, 2025, Honeywell filed a one count complaint in the Chancery Division,[1] seeking summary relief, R.4:67, for "access" to SATEC's Property, located at 10 Milltown Court in Union Township, New Jersey. Aa107. Honeywell sought to undertake environmental remediation activities (both "environmental testing" and "soils and groundwater injections"), in purported conformity with the parties' Settlement Agreement. Aa1.

SATEC cross-moved for an order directing that issues beyond mere "access" to SATEC's Property[2] for "environmental testing" be transferred to binding arbitration before the parties' designated Arbitrator, Ret. Superior Court Judge Mark

---

[1] Honeywell did not bring an action in the Law Division, in aid of litigant's rights, under the previous docket, UNN-L-1372-05; and the subject Chancery complaint filed by Honeywell made only passing reference to the Settlement Agreement. As to which, the Settlement Agreement specifically failed to include any provision for any party thereto, aggrieved by the conduct of the other party to address such issues in the Law Division. In fact, the Settlement Agreement, Aa1, provides as the **only** dispute resolution process binding arbitration between the parties' mediator/arbitrator, Ret. Superior Court Judge Mark Epstein, J.S.C.

[2] There is no dispute in the record that, not only did SATEC not deny Honeywell access to undertake groundwater and soils testing, SATEC repeatedly demanded that Honeywell so act. However, the record before the Trial Court is also clear that Honeywell rebuffed each and every request by SATEC during 2022, 2023 and 2024 to undertake both soils and groundwater testing. As a result, the record before the Trial Court is equally clear that SATEC was forced to undertake its own soils and groundwater testing in late 2024, and that testing revealed the continued presence of significant soils and groundwater contamination at the SATEC Property. See, Aa16, Branover Certification at ¶16 through ¶18.

Epstein. SATEC objected to Honeywell's proposal for additional soils and groundwater injections as "unreasonable," and requested that Honeywell provide updated testing results for both soils and groundwater. The record before the Trial Court evidences that Honeywell failed to undertake any such additional testing, requiring SATEC to undertake same (see, n. 2, *supra*), Aa122, and as a result SATEC asserted there were four (4) arbitrable areas of dispute:

1. Approved Costs of Remediation;
2. SATEC's right to "advice and consent" with respect to Honeywell's submissions to NJDEP;
3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed); and
4. The reasonableness of Honeywell's proposed remediation strategy.

On April 4, 2025, the Trial Court issued its Decision and Order (the "April 4, 2025 Decision and Order"), Aa60, which agreed with SATEC's position. The Court granted Honeywell "access" to SATEC's Property - but only for "environmental testing" and not to undertake "environmental remediation." Instead, the Trial Court transferred to arbitration the four (4) arbitrable issues, as requested by SATEC:

> (a) "Any remaining issues pertaining to the Approved Costs Remediation **and methods by which Honeywell intends to remediate,** pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, sent to binding arbitration in front of Retired Judge Epstein."
>
> (b) "The Court is satisfied that access to the Property is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that Defendant has raised issues with respect to the Approved Costs of Remediation,

> Defendant's right to "advice and consent" and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" proposing such remediation strategies."
>
> (c) "Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to Honeywell's request to access the Property and GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate, which shall be brought pursuant to the Settlement Agreement between the Parties."

Aa60, April 4, 2025 Decision and Order (emphasis supplied). SATEC thereafter transmitted to the Court, under the Five-Day Rule, a proposed Order which either stayed the matter or dismissed it without prejudice pending arbitration, in conformity with N.J.S.A. 2A:23B-7. Aa239.

On April 23, 2025, Honeywell filed a motion for leave to file an amended complaint seeking, among other things, judicial authorization to install monitoring wells, conduct groundwater injections, and undertake other "environmental remediation" on the SATEC Property. Aa225. The foregoing despite the fact that (a) SATEC objected to Honeywell's proposed "environmental remediation" strategy and (b) such issues were already determined by the Trial Court to be ripe for arbitration in conformance with the Settlement Agreement. See *supra*, Aa60, April 4, 2025 Decision and Order. SATEC thereupon cross-moved in aid of litigants' rights to compel arbitration as to the four (4) arbitrable issues identified in the April 4, 2025 Decision and Order. Aa248. SATEC relied upon the Second Supplemental Certification of SATEC's LSRP, Kevin Stattel (Aa252), the Supplemental

Certification of SATEC's Chairman, H. Daniel Branover (Aa57) and the Certification of SATEC's Counsel, with exhibits (Aa195).

By Order dated May 13, 2025 (the "May 13, 2025 Decision and Order") the Trial Court (even though no motion for reconsideration had been timely filed by Honeywell) arguably reduced the areas of arbitrable dispute to one (1): Approved Costs of Remediation. Aa64. The Trial Court, nevertheless, stayed the matter pending completion of arbitration. Id. The Arbitrator, in purported reliance upon the May 13, 2025 Decision and Order, subsequently reduced the scope of the arbitration from four (4) areas to only Approved Costs of Remediation. Aa247. SATEC objected to same and thereafter timely filed this appeal.

STATEMENT OF FACTS

A. The 2009 Settlement Agreement and the Arbitrable Disputes.

The Settlement Agreement resolved environmental contamination claims brought against Honeywell and its predecessors. Aa16, Branover Cert., ¶4. The purpose and intent of the Settlement Agreement were to identify and then remediate the soils and groundwater contamination at SATEC's Property. Id. More specifically, the Settlement Agreement, in Recital ¶C, provides that,

> **"the purposes of this Settlement Agreement are to**: (i) resolve the Litigation between the Parties, including all claims which were, or could have been, presented in that matter; (ii) **achieve a satisfactory environmental remediation that (a) permits SATEC to finance or sell, at market price, without diminution in value for environmental contamination, the Property, at the earliest possible time, and (b) secure a No Further Action letter from the New Jersey Department of Environmental Protection ("NJDEP") approving the clean-up of soil and groundwater (as may be required by the NJDEP) at the Property . . . ."**

Aa1, Settlement Agreement, Recital ¶C (emphasis added).

The Settlement Agreement mandates that Honeywell coordinate its proposed environmental remediation plans and efforts with SATEC:

> "Honeywell shall prepare and submit, with the advice and consent of SATEC, one or more proposals (individually a **"Proposed Remediation Plan"** and collectively the **"Proposed Remediation Plans"**) to NJDEP for the environmental remediation of the soils and ground water at the Property."

Aa1, Settlement Agreement, §3.1; Aa16, Branover Cert., at ¶6. However, Honeywell has failed to do so, and continues to fail to do so. Aa57, Branover Supplemental Cert., ¶¶3-5.

Section 3.1 of the Settlement Agreement further provides that, "Honeywell may, in good faith, determine that the most cost-effective and expedient approach for remediation of the soil contamination is to undertake an "at risk" soil removal program, without first submitting that program to NJDEP for review and approval as an Approved Remediation Plan. Use of the foregoing approach to soil remediation by Honeywell shall not negate the requirement to secure an NFA for soils." Id. (emphasis added). SATEC thereby permitted Honeywell "to remove, for off-site disposal, soil as reasonably required to obtain an NFA for soils and thereafter to install a soil "cap" consisting of bituminous asphalt (as appropriate), or other similar impermeable material." Id. at §3.5. Aa 16, Branover Cert.,¶¶5-7.

As to environmental remediation work to be undertaken by Honeywell, the Settlement Agreement required that,

> **Honeywell shall ensure that remediation proceeds in a timely and workman like manner**. Until the Approved Costs of Remediation (defined in Section 2.1) exceed $2,000,000 **Honeywell shall obtain the consent of SATEC** concerning the manner in which the remediation shall be performed. SATEC shall not unreasonably withhold its consent, subject, nevertheless, to the Parties' rights to arbitrate disputes **pursuant to the arbitration process set forth in Section 2.4** . . . . Once the Approved Costs of Remediation exceed $2,000,000 (and SATEC is no longer obligated to contribute), Honeywell shall have sole discretion (subject, nevertheless, to a

> reasonableness standard, **the Parties' rights to arbitrate as hereinbefore set forth** and Honeywell's express obligations and undertakings pursuant to this Agreement) regarding the manner in which it shall complete any remediation.

Aa1, Settlement Agreement, §3.2 (emphasis added).

Moreover, Honeywell was required to "provide advance notice of any meetings with NJDEP" to SATEC in order to "afford SATEC a reasonable opportunity to participate in such meetings," but Honeywell has also refused to do that. Aa1, Settlement Agreement, §3.2 (emphasis added); Aa16 Branover Cert., ¶7.

Finally, §2.4 of the Settlement Agreement outlines the "arbitration process" referenced in §3.2:

> in the event of any dispute between the Parties over whether any costs or expenses constitute Approved Costs of Remediation, the Parties shall promptly confer in an effort to resolve their differences. If the Parties are unable to resolve any dispute following a reasonable opportunity for joint consultation, then any and every question, dispute, claim or controversy concerning whether any costs or expenses constitute Approved Costs of Remediation shall be finally and non-appealably resolved solely by retired New Jersey Superior Court Judge Mark Epstein.

Id. at §2.4; (Aa16, Branover Cert., ¶8. The "arbitration process" could thus not be more clear: arbitrable issues were to be resolved by Judge Epstein.

During settlement negotiations in 2009, there were discussions as to whether or not the best path forward would include immediate soils excavation of the two (2) identified areas of soil contamination at the Property; or, instead, to use targeted soils and groundwater "injections" of various solvents in order to "break down" the

contamination that was in the soils, which contamination was "leaking" into the groundwater. Aa16, Branover Cert., ¶6. As to which, and prior to the settlement, SATEC had engaged the services of Hillmann Environmental ("Hillmann") to undertake an environmental assessment of the Property, Id. Hillmann identified the soils and groundwater contamination in two (2) areas of the Property: (1) an area at the far end of the parking lot, close to a small water tributary (the "Adjacent Parking Area"); and (2) another parking lot area most proximate to the Property's building (the "Building") (the "Building Parking Area"). Id. These two (2) areas are generally depicted on a site diagram prepared by SATEC's current environmental consultants, Gibson & Stattel Environmental, Inc. ("G&S"). Id. at ¶9, Aa 33.

The provisions of the Settlement Agreement relating to the "at-risk" excavation of soils, and thereafter installation of a new asphalt "cap," were thus the result of the settlement negotiations. Aa16, Branover Cert., ¶10. SATEC advised Honeywell of Hillmann's discussions with NJDEP at that time, where NJDEP rejected the suggestion of only doing injections as opposed to either soils removal only or soils removal followed by any necessary injections. Id.

After execution of the Settlement Agreement in 2009, Honeywell spent the next seven (7) years (from 2009 to 2016) "studying" the Property and then, in 2016, unilaterally chose not to excavate the contaminated soils, despite the clear and unequivocal language in the Settlement Agreement that specifically authorized an

"at risk" soils removal program and gave Honeywell specific permission for off-site disposal of the contaminated soils. Id. at ¶13; Aa1, Settlement Agreement, §§3.0 and 3.5. Instead of removing the soils between 2009 and 2016, in 2016 Honeywell determined to utilize only "injections" of various chemicals to treat the contamination of the soils and groundwater (the "2016 Injections"). Aa16, Branover Cert., ¶13.

By the Fourth Quarter of 2022, some 13 years after the Settlement Agreement was executed and some 6 years after the 2016 Injections were performed, Honeywell had allegedly run up costs as part of "Approved Costs of Remediation" in excess of $2,500,000. Id. at ¶14. On November 14, 2022, SATEC's Counsel wrote to Honeywell's Counsel to object to the status of the remediation efforts, and the staggering sums allegedly spent with no end in sight, advising that SATEC would secure its own LSRP, Kevin Stattel of G&S, to review the Settlement Agreement and underlying materials regarding soils and groundwater contamination as well as Honeywell's then proposal to employ yet another round of injections as opposed to excavating the admittedly contaminated soils. Id. at ¶14.

By July 2023, G&S had issued its initial report regarding the status of Honeywell's environmental work, the faults G&S found with Honeywell's efforts and with Honeywell's proposal for further injections without soils excavation (the "G&S July 2023 Report"). Aa38. SATEC thereby objected to Honeywell's

proposed use of further injections in lieu of soils excavation as unreasonable under the circumstances; and SATEC was not advised of nor did SATEC approve of Honeywell submitting a proposal to NJDEP to undertake additional injections without first removing the contaminated soils. Aa57, Branover Supp. Cert., ¶¶3-5.

SATEC thereupon asserted in its Answer and Counterclaim (Aa122) that it had a contractual right to "reasonably" withhold its consent to Honeywell's presently proposed remediation strategy - which included more injections but no soils excavation - which SATEC considered to be "unreasonable" under the facts presented and the time elapsed. Id. Such disputes, SATEC argued, should be submitted to arbitration. Id. Aa122.

SATEC therefore cross-moved before the Trial Court to compel arbitration on four (4) areas of arbitrable dispute. Aa122. The Trial Court's April 4, 2024 Decision and Order agreed with SATEC, and determined that there were four (4) arbitrable areas of dispute, as identified by SATEC:

1. Approved Costs of Remediation;
2. SATEC's right to "advice and consent" with respect to Honeywell's submissions to NJDEP;
3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed); and
4. The reasonableness of Honeywell's proposed remediation strategy.

Aa60.

However, on May 13, 2024, the Trial Court *sua sponte* (and without a motion for reconsideration before it) sought to "clarify" its April 4, 2025 Decision and

Order and appeared to reverse itself, now finding only one (1) arbitrable area of dispute (Approved Costs of Remediation):

> **ORDERED** that Defendants' Cross Motion in Aid of Litigant's Rights is hereby **GRANTED** with respect to those issues related to Approved Costs of Remediation and **DENIED** with respect to such other matters that are not explicitly provided for in the Settlement Agreement or this Court's April 4, 2025 Order . . . ,

Aa64, but without elaborating on what "explicitly provided for in the Settlement Agreement or this Court's April 4, 2025 Order" meant.

Based upon the language of the May 13th Order, the Arbitrator thereafter errantly limited the scope of the arbitrable issues to only one, Approved Costs of Remediation, without regard to the fact that the April 4, 2025 Decision addressed four (4) arbitrable issues, as set forth above. Aa247.

SATEC thus takes issue with the Trial Court's May 13, 2025 Decision and Order which arguably limited the scope of arbitrable issues to only Approved Costs of Remediation, as well as the Arbitrator's reliance upon same. SATEC seeks reversal of both, and reinstitution of the "explicit" findings of the April 4, 2025 Decision, which provided for four (4) areas of arbitrable dispute, as follows:

1. Approved Costs of Remediation;
2. SATEC's right to "advice and consent" with respect to Honeywell's submissions to NJDEP;
3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed); and
4. The reasonableness of Honeywell's proposed remediation strategy.

Aa 60.

LEGAL ARGUMENT

POINT I

HONEYWELL'S "RIGHT" TO ACCESS THE SATEC PROPERTY IS NOT AT ISSUE; RATHER, HONEYWELL'S "REASON" FOR ACCESS – AND THE "REASONABLENESS" OF HONEYWELL'S PRESENTLY PROPOSED ENVIRONMENTAL REMEDIATION OF SATEC'S PROPERTY – ARE THE MATTERS RIPE FOR ADJUDICATION, AND THE 2009 SETTLEMENT AGREEMENT MANDATES ARBITRATION AS THE ADJUDICATION FORUM

Throughout its 73 page merits brief, Honeywell attempts to conflate its alleged "statutory obligations" to NJDEP to "clean up" the SATEC Property with Honeywell's contractual obligations to SATEC to achieve that same goal. The underlying Honeywell-SATEC contract, the Settlement Agreement, controls the intended methodology by which the parties to that Settlement Agreement were to conduct themselves - and serves as the "reason" for Honeywell's need to access SATEC's Property. But for that contractual obligation, Honeywell would neither have a need, or a "right," to access SATEC's Property.

After sixteen (16) years of little to no substantive improvement in the soils and groundwater contamination at the SATEC Property, and after Honeywell allegedly expended approximately $3,000,000 in Approved Costs of Remediation, SATEC notified the Settlement Agreement's designated Arbitrator, Judge Epstein, of SATEC's assertion of breach by Honeywell of its obligations under the Settlement Agreement. Three (3) years later, and despite multiple requests from SATEC for updated soils and groundwater sampling by

Honeywell - to "prove out" the true status of the contamination remaining at SATEC's Property - Honeywell refused to provide that critical data to SATEC, and SATEC was required to hire its own LSRP, G&S (Kevin Stattel) to conduct the sampling. When those results confirmed SATEC's worst fears (continued, substantial groundwater and soils contamination at SATEC's Property), SATEC again sought relief under the Settlement Agreement through mediation and arbitration. The record reflects that Honeywell resisted each and every such request by SATEC.

Instead of proceeding to mediation or arbitration as provided in the Settlement Agreement, Honeywell sought judicial intervention - but not under the original Law Division Docket (UNN-L-1532-05). Rather, Honeywell sought relief in the Chancery Division - seeking a "summary proceeding." When SATEC balked at being forced to accept Honeywell's continued unilateral determination (without any input whatsoever from SATEC) as to the course of environmental remediation activities on SATEC's Property, SATEC sought to enforce (before the Chancery Division) SATEC's right to arbitrate under the Settlement Agreement.

Accordingly, SATEC submits to this Court that the true issue is not "access" to SATEC's Property for purposes of investigative work - as SATEC repeatedly asked Honeywell to provide updated soils and groundwater sampling - the real issue is the "method of remediation" to be employed in the future by

Honeywell. Honeywell's repeated mantra of and reference to the environmental cleanup regulations (N.J.A.C. 7:26C-8.2, et. seq.) is nothing more than a red herring, intended to avoid discussion of Honeywell's contractual obligations to SATEC under the Settlement Agreement.

Settlement Agreement §3.8 provides that both Honeywell and NJDEP were granted "reasonable access to the Property for investigation and remediation . . . ." Aa1, Settlement Agreement, §3.8. Thus, Honeywell did not need to resort to the Access Statute or the Chancery Division. Honeywell's right to "access" SATEC's Property was coupled with Honeywell's obligations under the Settlement Agreement to timely and fully remediate both soils and groundwater contamination at SATEC's Property, such that SATEC "could refinance or sell the Property at market price without diminution in value for environmental contamination. . . at the earliest possible time." Aa1, Settlement Agreement, Recital C.

Simply put, the only reason Honeywell had need to "access" the SATEC Property was to satisfy Honeywell's contractual obligations to SATEC under the Settlement Agreement. As SATEC alleges that Honeywell breached those obligations, the issue before the Trial Court (and the issue before this Court) is the forum for the adjudication of SATEC's breach allegations against Honeywell – no more, and no less. Therefore, the issue of the reasonableness of Honeywell's proposed remediation of SATEC's Property is for the Arbitrator, pursuant to the "arbitration process" contained in the Settlement Agreement.

The Trial Court's April 4, 2025 Decision and Order specifically identified four (4) areas of arbitrable dispute, denominated as:

1. Approved Costs of Remediation;
2. SATEC's right to "advice and consent" with respect to Honeywell's submissions to NJDEP;
3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed); and
4. The reasonableness of Honeywell's proposed remediation strategy.

Aa60. SATEC contends that April 4, 2025 determination by the Trial Court was accurate, and consistent with both the text of the Settlement Agreement and the underlying intent of same, as provided by SATEC's Chairman, Daniel Branover. Aa16, Branover Cert.

The only "conflicting directive" that exists (Rb38) is that the Trial Court thereafter, in its May 13, 2025 Decision and Order, utilized confusing language which appeared to re-write the language of the April 4, 2025 Decision and Order by providing that SATEC's cross-motion in aid of litigant's rights is "hereby **GRANTED** with respect to those issues related to Approved Costs of Remediation and DENIED with respect to such other matters that are not expressly provided in the Settlement Agreement or this Court's April 4, 2025 Order." Aa64. It is that confusing language, and the Arbitrator's reliance thereupon (Aa247), that served as the genesis for this appeal. Furthermore, Honeywell's position (Rb40) that the Court's April 4th Order "granted Honeywell's application in its entirety" is facially incorrect. There is no portion

of the April 4, 2025 Decision and Order that could be read to allow Honeywell unbridled authority to conduct remediation activities on SATEC's Property without SATEC's consent. The Trial Court expressly ruled that there were four (4) areas of arbitrable dispute at issue, and those disputes had to be submitted to Judge Epstein for resolution.

So, too, Honeywell's argument (Rb40) that the Trial Court's May 13, 2025 Decision and Order "improperly curtailed Honeywell's contractual rights to complete the clean-up," is equally mystifying. It is, instead, the contractual rights of both parties - Honeywell and SATEC - that must be evaluated, as those rights are set forth in the Settlement Agreement. In order to evaluate those rights, and the competing positions of both parties, there needs to be an adjudication. That adjudication must address, among other things, the "reasonableness" (both past and proposed) of Honeywell's remediation activities (16 years and counting) at SATEC's Property.

The issue before this Court is, quite simply: what is the proper tribunal for that adjudication - the Superior Court or the parties' appointed Arbitrator, Judge Epstein. SATEC submits that the unambiguous language of the Settlement Agreement provides that the "arbitration process" should be the proper vehicle for the determination of the four (4) areas of dispute identified in the Trial Court's April 4, 2025 Decision and Order.

The Settlement Agreement, on its face, does not provide for any judicial intervention in the event of a dispute. In fact, the Settlement Agreement is utterly devoid of any reference to any party having the "contractual right" to proceed back to the Law Division in the event of dispute. The only dispute resolution process referenced in the Settlement Agreement is binding arbitration, before the parties' designated Arbitrator. That "arbitration process" is defined in Section 2.4 of the Settlement Agreement, and it applies to a variety of potential areas of dispute, as the Trial Court correctly determined in its April 4, 2025 Decision and Order:

> (a) "Any remaining issues pertaining to the Approved Costs Remediation **and methods by which Honeywell intends to remediate,** pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, sent to binding arbitration in front of Retired Judge Epstein."
>
> (b) "The Court is satisfied that access to the Property is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that Defendant has raised issues with respect to the Approved Costs of Remediation, Defendant's right to "advice and consent" and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" proposing such remediation strategies."
>
> (c) "Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to Honeywell's request to access the Property and GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate, which shall be brought pursuant to the Settlement Agreement between the Parties."

Aa60, April 4, 2025 Decision and Order (emphasis supplied).

With the entry of the April 4, 2025 Decision and Order, which directed the parties to arbitration, the matter before the Chancery Division was "final." There was no timely motion for reconsideration filed by Honeywell, and no timely appeal filed either. Yet, the Trial Court allowed Honeywell to file additional motions and then the Trial Court, apparently *sua sponte*, attempted to "clarify" its position by virtue of the May 13, 2025 Decision and Order.

In summary, SATEC submits that the issue of "access" to SATEC's Property is nothing but a clever distraction by Honeywell. The real issue is, once access is provided, what will Honeywell do? Will Honeywell sample (groundwater and soils)? The record before the Trial Court evidences that Honeywell failed and refused to do so, despite SATEC's multiple requests for sampling data. Will Honeywell attempt additional groundwater and soils injections? That is Honeywell's stated intent, and with that SATEC respectfully objects based upon the express provisions, as well as the stated purpose and intent, of the Settlement Agreement. SATEC's objection thus calls for adjudication – and the forum for that adjudication should be arbitration before Judge Epstein.

A. SATEC has a contractual right to object to and arbitrate what it considers to be patently unreasonable environmental remediation proposals; as well as Honeywell's refusal, despite SATEC's repeated requests, to undertake current soils and groundwater testing at SATEC's Property in order to properly delineate the existing environmental contamination.

Honeywell's assertion that it "engaged in good faith efforts to reach an agreement with SATEC" regarding access to SATEC's Property is belied by the record below. The record below confirms that Honeywell wanted nothing other than to do things its way with respect to SATEC's Property; and "Honeywell's way" with respect to SATEC's Property ignored each and every of SATEC's requests to remove the contaminated soils that had burdened that Property for the past 16 years.

Honeywell's assertion (Rb46-47) that it attempted to "alleviate SATEC's concerns" with respect to future soils and groundwater injections is also without support in the record. Honeywell's actions (actions in going to NJDEP and filing papers without SATEC's knowledge or consent) and inactions (by failing and refusing to undertake requested soils and groundwater sampling to ascertain the true status of the Property's environmental contamination in 2022-2024) that caused SATEC to hire its own LSRP (G&S) to undertake that sampling.

Honeywell's attempted reliance upon PPG Industries Inc. v. the Mid-Newark LP, No. C-1237-15 (N.J. Super. Nov. 18, 2016), an unpublished decision, does not support Honeywell's right to relief in contravention of the Settlement Agreement. In PPG, there was no "access agreement" in place between the parties. In the case of SATEC, the "access agreement" is part and parcel to the Settlement Agreement. The issue is, thus, the reasonableness of the methodologies by which Honeywell has remediated, and in the future plans to

remediate, SATEC's Property. It is with those actions, as well as Honeywell's other actions and inactions, that SATEC takes issue and seeks adjudication through the "arbitration process" delineated in the Settlement Agreement.

B. The Trial Court correctly concluded that there was at least one (1) arbitrable issue between Honeywell and SATEC under the 2009 Settlement Agreement; but the Trial Court, in its May 13, 2025 Decision, confused the arbitrable issues and deprived SATEC of its rights under the 2009 Settlement Agreement to arbitrate other issues.

On pages 49 through 52 of its Reply Brief, Honeywell continues to conflate issues concerning "access" to SATEC's Property under the Access Statute, N.J.S.A. 58:10b-16, with Honeywell's contractual obligations to SATEC under the Settlement Agreement. Because Honeywell and SATEC did come to an "agreement" with respect to Honeywell's access to, and contractual obligations to environmentally remediate SATEC's Property (through the Settlement Agreement), the issue before the Trial Court was whether the disputes` between Honeywell and SATEC under the Settlement Agreement should be adjudicated in the Superior Court or through arbitration.

By filing its opposition to Honeywell's requested relief under the Access Statute (N.J.S.A. 58:10b-16), SATEC properly raised the issue of the Settlement Agreement, and further properly raised the issue of Honeywell's alleged breach thereof. Through SATEC's application, which the Trial Court properly considered, the questions of proper venue to adjudicate that dispute was resolved properly in the

April 4, 2025 Decision and Order; but was thereafter confused by the Trial Court in the May 13, 2025 Decision and Order.

POINT II

THE PLAIN LANGUAGE OF THE 2009 SETTLEMENT AGREEMENT PROVIDES FOR FOUR (4) AREAS OF ARBITRABLE DISPUTE; AND IN THE EVENT THAT THE 2009 SETTLEMENT AGREEMENT IS IN ANY WAY AMBIGUOUS, SATEC PROVIDED THE ONLY CERTIFICATION OF A PERSON INVOLVED IN THE SETTLEMENT NEGOTIATIONS IN ORDER TO EXPLAIN THE SCOPE AND THE INTENT OF THE 2009 SETTLEMENT AGREEMENT

The validity of an agreement to arbitrate presents a question of law. Ogunyemi v. Garden State Med. Ctr., 478 N.J. Super. 310, 315 (App. Div. 2024) (citing Skuse v. Pfizer, Inc., 244 N.J. 30, 46 (2020) (a trial court's interpretive analysis should not be deferred to unless an appellate court finds its reasoning persuasive)). "We owe no special deference to the Trial Court's interpretation of an arbitration provision, which we view 'with fresh eyes.'" Ibid. (quoting Morgan v. Sanford Brown Inst., 225 N.J. 289, 303 (2016)). Courts must be, "mindful of the strong preference to enforce arbitration agreements, both at the state and federal level." Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013).

Accordingly, the key questions for this Court when reviewing enforceability of an arbitration provision are "(1) whether there is a valid and enforceable agreement to arbitrate disputes; and (2) whether the dispute falls within the scope of the agreement." Wollen v. Gulf Stream Restoration & Cleaning, LLC, 468 N.J.

Super. 483, 497 (App. Div. 2021) (citing Martindale v. Sandvik, Inc., 173 N.J. 76, 83 (2002)).

A reviewing court's first task is to apply contract-law principles to determine "whether a valid agreement to arbitrate exists." Hojnowski v. Vans Skate Park, 187 N.J. 323, 342 (2006). "[A] party must agree to submit to arbitration." Hirsch, 215 N.J. at 187 (citing Guidotti v. Legal Helpers Debt Resol., L.L.C., 716 F.3d 764, 771 (3d Cir. 2013) (explaining that "a judicial mandate to arbitrate must be predicated upon the parties' consent")). Under our state's defined contract law principles, a valid and enforceable agreement requires: (1) consideration; (2) a meeting of the minds based on a common understanding of the contract terms; and (3) unambiguous assent. Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442-45 (2014).

A reviewing court's second task is to "ascertain the intention of the parties as revealed by the language used, the situation of the parties, the attendant circumstances, and the objects the parties were striving to attain." Celanese Ltd. v. Essex Cnty. Imp. Auth., 404 N.J. Super. 514, 528 (App. Div. 2009). "Where the terms of a contract are clear, we enforce the contract as written and ascertain the intention of the parties based upon the language." Pollack v. Quick Quality Rests., Inc., 452 N.J. Super. 174, 187-88 (App. Div. 2017).

"A basic principle of contract interpretation is to read the document as a whole in a fair and common sense manner." Hardy ex rel. Dowdell v. AbdulMatin, 198 N.J.

95, 103 (2009). "[T]he terms of the contract must be given their 'plain and ordinary meaning.'" Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002) (quoting Nester v. O'Donnell, 301 N.J. Super. 198, 201 (App. Div. 1997)). "Where the terms of an agreement are clear, we ordinarily will not make a better contract for parties than they have voluntarily made for themselves, nor alter their contract for the benefit or detriment of either . . . ." Carroll v. United Airlines, Inc., 325 N.J. Super. 353, 358 (App. Div. 1999). In other words, "[i]f the contract into which the parties have entered is clear, then it must be enforced as written." Serico v. Rothberg, 234 N.J. 168, 178 (2018) (quoting In re Cnty. of Atl., 230 N.J. 237, 254-55 (2017)).

By its April 4, 2025 Decision and Order, the Trial Court fully resolved the action by (1) granting Honeywell summary relief for "access" to undertake "environmental testing," and (2) granting SATEC's cross-relief for referral of "any issues remaining" under the Settlement Agreement to arbitration, particularly as to any "environmental remediation" proposed by Honeywell. The Trial Court's language on April 4, 2025 could not have been more clear:

> (a) "Any remaining issues pertaining to the Approved Costs Remediation[3] and methods by which Honeywell intends to remediate,[4] pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, sent to binding arbitration in front of Retired Judge Epstein."
>
> (b) "The Court is satisfied that access to the Property

[3] Arbitration Issue #1
[4] Arbitration Issue #2

> is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that Defendant has raised issues with respect to the Approved Costs of Remediation, Defendants right to "advice and consent"[5] and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" in proposing such remediation strategies."[6]
>
> (c) "Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to Honeywell's request to access the Property and GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate, which shall be brought pursuant to the Settlement Agreement between the Parties."

Aa 60, April 4, 2025 Decision and Order (emphasis supplied).

The Trial Court's May 13, 2025 Decision and Order effectively *sua sponte* modified the April 4, 2025 Decision and Order, and adopted a confusing legal determination as to the arbitrable issues, inconsistent with the plain language of the Settlement Agreement:

> **ORDERED** that Defendants' Cross Motion in Aid of Litigant's Rights is hereby **GRANTED** with respect to those issues related to Approved Costs of Remediation and **DENIED** with respect to such other matters that are not explicitly provided for in the Settlement Agreement or this Court's April 4, 2025 Order,
>
> Accordingly, Plaintiff's Motion to Amend their Complaint is hereby DENIED without prejudice and Defendant's Cross-Motion in Aid of Litigants' Rights is hereby

[5] Arbitration Issue #3
[6] Arbitration Issue #4

> GRANTED with respect to issues relating to Approved Costs of Remediation and DENIED with respect to issues not explicitly required to be arbitrated before Judge Epstein (ret.) and not explicitly ordered by this Court in its April 4, 2025 Order.

Aa64. The Court's confusing language in its May 13th ruling lead to an equally confusing (and incorrect) determination by the Arbitrator – who interpreted the Court to mean that "only" Approved Costs of Remediation would be referred to arbitration. Aa247. Both the May 13th ruling and the Arbitrator's subsequent determination are incorrect readings of the plain language of the Settlement Agreement, and the clear intent of the parties to that Agreement – as evidenced by a holistic review of that Agreement and the explanatory background circumstances recounted in the Branover Certification (Aa16).

The Settlement Agreement includes a mutually negotiated, binding arbitration provision, with a designated Arbitrator, an "arbitration process" and the designation of New Jersey law. Aa 1, §§ 2.4, 3.1 and 3.2. The express scope of the "arbitration process" includes, but is not limited to, (1) issues concerning "Approved Costs of Remediation," (2) SATEC's right to "advice and consent" and (3) to object to Honeywell's proposed course of environmental remediation (further injections as opposed to soils excavation with limited injections), and (4) Honeywell's "reasonableness" in proposing its present remediation strategy.

The provisions of the Settlement Agreement, §2.4, as to Approved Costs of Remediation, as well as §§3.1 and 3.2, as to SATEC's ability to "not unreasonably withhold its consent" concerning "the manner in which the remediation shall be performed" and the "reasonableness standard" to be applied to Honeywell's discretion as to the remediation, are all issues specifically reserved for the "arbitration process" delineated in §2.4.

The "process" for the arbitration set forth in §2.4 of the Settlement Agreement provides that Judge Epstein would render a "final and non-appealable decision." Id. In the event that Judge Epstein was unable or unwilling to serve as Arbitrator, the Settlement Agreement provided a methodology for a replacement Arbitrator. Id. The Settlement Agreement did not provide to any party the right to proceed back to the Law Division in the event of disputes. Instead, those disputes would be handled by a single Arbitrator, identified as Judge Epstein.

First, § 2.4 of the Settlement Agreement provides that if there are any disputes as to "whether any costs or expenses constitute Approved Costs of Remediation, the Parties shall promptly confer in an effort to resolve their differences." As set forth in the Branover Certification (Aa57) and in the Stattel Certification (Aa146), SATEC has objected to Honeywell's alleged Approved Costs of Remediation, and placed Judge Epstein on notice of that objection. As a result, Honeywell and SATEC are bound to proceed to arbitration before Judge Epstein as to the appropriate level

of Approved Costs of Remediation. In that regard, the Settlement Agreement provides that, "if the Parties are unable to resolve any dispute following a reasonable opportunity for joint consultation, **then any and every question, dispute, claim or controversy concerning whether any costs or expenses constitute Approved Costs of Remediation shall be finally and non-appealably resolved solely by retired New Jersey Superior Court Judge Mark Epstein**." Aa1, §2.4 (emphasis added).

Second, §3.1 of the Settlement Agreement provides that, "Honeywell shall prepare and submit, with the advice and consent of SATEC, one or more proposals (individually a "Proposed Remediation Plan" and collectively the "Proposed Remediation Plans") to NJDEP for the environmental remediation of the soils and ground water at the Property." Aa1. The record reflects that Honeywell has failed to do so with respect to the 2016 Injections and with respect to Honeywell's presently proposed additional injections.

Third, §3.2 of the Settlement Agreement provides that, "Honeywell shall ensure that remediation proceeds in a timely and workman like manner." Aa1. In the sixteen (16) years post the Settlement Agreement's execution, only one (1) round of injections has been employed by Honeywell, with no soils excavation. Aa16, Branover Cert., ¶¶ 13-14.

Fourth, §3.2 of the Settlement Agreement further provides that, "Until the Approved Costs of Remediation exceed $2,000,000 Honeywell shall obtain the consent of SATEC concerning the manner in which the remediation shall be performed. SATEC shall not unreasonably withhold its consent, subject, nevertheless, to the Parties' rights to arbitrate disputes **pursuant to the arbitration process set forth in Section 2.4."** Aa1 (emphasis added).

Section 3.2 of the Settlement Agreement also provides that, "Once the Approved Costs of Remediation exceed $2,000,000 (and SATEC is no longer obligated to contribute), Honeywell shall have sole discretion (subject, nevertheless, to a reasonableness standard, **the Parties' rights to arbitrate as hereinbefore set forth** and Honeywell's express obligations and undertakings pursuant to this Agreement) regarding the manner in which it shall complete any remediation." Aa1.

A determination by Judge Epstein as to Approved Costs of Remediation thus impacts the standard to be applied to the arbitration of Honeywell's chosen remediation strategies. SATEC asserts that, even if Judge Epstein were to determine that Approved Costs of Remediation validly exceeds $2,000,000 at this point in time, Honeywell's unilateral determination to employ further injections (as opposed to soils excavation first, followed potentially by limited injections thereafter), fails under a "reasonableness standard" and Honeywell's "express obligations and undertakings pursuant" to the Settlement Agreement. Disputes as to Honeywell's

actions and choices of remediation strategies are to be adjudicated "pursuant to the arbitration process set forth in Section 2.4" of the Settlement Agreement.

All of those four (4) discreet (but related) issues (as well as other issues that may arise out of or otherwise be related to those issues) must thus be submitted to Judge Epstein in accordance with the clear and unambiguous "**arbitration process**" contained in the Settlement Agreement, at §2.4.

N.J.S.A. 2A:23B-7(e) provides that, "if a proceeding involving a claim referable to arbitration pursuant to an alleged agreement to arbitrate is pending in court, an application pursuant to this section shall be made in that court." In such an instance, the court "shall proceed summarily to decide the issue in order for the parties to arbitrate unless it find that there is no enforceable agreement to arbitrate." N.J.S.A. 2A:23B-7(a)(2). In this case, the Settlement Agreement executed by both Honeywell and SATEC includes explicit reference to, and an agreement to be bound by, a defined arbitration procedure before Judge Epstein. Of that, there can be no dispute.

Courts apply a two-pronged inquiry when reviewing an application to compel arbitration: (a) whether there is a valid and enforceable agreement to arbitrate disputes; and (b) whether the dispute falls within the scope of the agreement to arbitrate. Martindale v. Sandvik, Inc., 173 N.J. 76 (2002). By virtue of the express language of the Settlement Agreement, four (4) categories of dispute are to be

decided by a final and non-appealable arbitration decision rendered by Judge Epstein. The Trial Court's April 4, 2025 Decision and Order correctly recognized this, and properly interpreted the Settlement Agreement as providing for four (4) broad arbitrable issues. Aa60. In contrast, the May 13, 2025 Decision and Order thoroughly confused the issues and deprived SATEC of its right arbitrate those four (4) areas of arbitrable dispute identified in the April 4, 2024 Decision and Order. By virtue of (and in reliance upon) the confusing language of the Trial Court's May 13, 2025 Decision and Order, the Arbitrator thereafter errantly confined the arbitrable issues to one: Approved Costs or Remediation. Aa247.

A. The language of the Settlement Agreement referring the dispute to arbitration is not ambiguous.

There is a strong preference in the State of New Jersey to enforce arbitration agreements. Hirsch, 215 N.J. at 186; *see also*, Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 133 (2020) "[T]he affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving disputes" (quoting Martindale v. Sandvik, Inc., 173 N.J. 76, 92 (2002)). As our Supreme Court in Atalese v. U.S. Legal Services Group, LLP, 219 N.J. 430 (2014) held, "an arbitration clause need not contain a "prescribed set of words . . . to accomplish a waiver of rights" to proceed in a court proceeding. Id. at 447. In Kernahan v. Home Warranty Adm'r of Florida, Inc., 236 N.J. 301, 320 (2019), the Court held that Atalese

"imposes no talismanic recitations, acknowledging that a meeting of the minds can be accomplished by any explanatory comment that achieves the goal of apprising the consumer of her rights." *See also*, Cnty. of Passaic v. Horizon Healthcare Servs., Inc., 474 N.J. Super. 498, 504 (App. Div. 2023), holding that, "an express waiver of the right to seek relief in a court of law to the degree required by Atalese is unnecessary when parties to a commercial contract are sophisticated and possess comparatively equal bargaining power."

In the case at bar, both Honeywell and SATEC are sophisticated commercial enterprises; they employed a retired Superior Court Judge, Judge Epstein, to act as mediator in 2009; and the parties had competent environmental litigation counsel, as referenced in the UNN-L-1372-05 Docket, to craft an agreement by which the parties would be bound to arbitrate a variety of discrete but interrelated issues concerned environmental remediation with Judge Epstein - not just Approved Costs of Remediation. That was part of the "benefit of the bargain" that SATEC secured from Honeywell, and it was a means to allay SATEC's fears that Honeywell would act "fast and loose" with SATEC in the ensuing years. Aa16, Branover Cert., ¶¶ 18-20.

Arbitration agreements "should . . . be read liberally to find arbitrability if reasonably possible." Jansen v. Salomon Smith Barney, Inc., 342 N.J. Super. 254,

257 (App. Div. 2001). A court should resolve all doubts related to the scope of an agreement "in favor of arbitration." Id. at 258.

The language of the Settlement Agreement is clear; and the surrounding circumstances, as set forth in the Branover Cert. (Aa16, ¶9), reinforce the parties' agreement to arbitrate not simply Approved Costs of Remediation. The Settlement Agreement (Aa1) provides for arbitration of the following four (4) issues, as originally identified by the Trial Court in its April 4, 2025 Decision and Order (Aa60):

> 1. Approved Costs of Remediation (Settlement Agreement, §§2.1 and 2.4);
>
> 2. SATEC's right to "advice and consent" with respect to Honeywell's various submissions to NJDEP (Settlement Agreement, §3.1, and as set forth in §3.2, "SATEC should not unreasonably withhold its consent, **subject**, nevertheless, **to the Parties' rights to arbitrate disputes pursuant to the arbitration process set forth in §2.4**");
>
> 3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed) (Settlement Agreement, §3.2, "**subject**, nevertheless, **to the Parties' rights to arbitrate disputes pursuant to the arbitration process set forth in §2.4**"); and
>
> 4. The "reasonableness" of Honeywell's proposed remediation strategies (Settlement Agreement, §3.2, "subject, nevertheless, to a reasonableness standard, **the Parties' rights to arbitrate as hereinbefore set forth** and Honeywell's express obligations and undertakings pursuant to this agreement") regarding the manner in which it will complete any remediation.

As the Trial Court held in the April 4, 2025 Order and Decision (Aa 60), the clear terms of the Settlement Agreement pertain to the environmental remediation of the Property, including the removal of contaminated soils. Issues concerning this, and Honeywell's unilateral decision as to the methodology for remediation both in 2016 and presently, are subject to resolution through binding arbitration. However, the Trial Court's May 13, 2025 Order and Decision (Aa64) errantly modified (for no appreciable reason and with no motion for reconsideration filed) the April 4, 2025 Order and Decision and thereby improperly restricted SATEC's contractual right to arbitrate disputes with Honeywell.

The Trial Court's apparent limitation of the scope of arbitration in its May 13, 2025 Decision and Order resulted in a similar preclusion by the Arbitrator (Aa 247), to merely arbitrable issues concerning Approved Costs of Remediation. Indeed, the Arbitrator reviewed the Trial Court's May 13, 2025 Decision in so ruling. The Arbitrator wrote to the Parties and advised as follows:

> This is to confirm that my interpretation of Judge Mega' s 4/4/25 order and statement of reasons as clarified by Judge Mega's 5/13/25 order and statement of reasons is that the defendants' motion to compel arbitration with respect to those matters provided for in the settlement agreement applies only to section 2.4 of the agreement relating to approved costs of remediation.

Aa 247.

The Trial Court's May 13, 2025 limitation of the scope of arbitration is plain error. Similarly, the Arbitrator's reliance upon the Trial Court's May 13, 2025 Order and Decision is also plain error. The clear and express language of the Settlement Agreement encompasses not only arbitration of Approved Costs of Remediation, but also the other three (3) areas of dispute.

[A]n agreement to arbitrate, like any other contract, 'must be the product of mutual assent, as determined under customary principles of contract law.'" Atalese, 219 N.J. at 442 (citing NAACP of Camden Cty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 424 (App. Div. 2011)). "Mutual assent requires that the parties have an understanding of the terms to which they have agreed." Ibid. A legally enforceable agreement requires a "meeting of the minds." Ibid. (citing Morton v. 4 Orchard Land Tr., 180 N.J. 118, 120 (2004)).

The Settlement Agreement is, without question, a contract between Honeywell and SATEC. It resolved the then existing litigation, created contractual rights and obligations of both Honeywell and SATEC; and the Parties agreed to the forum and scope of future matters of dispute that would be sent to arbitration as opposed to litigation (the "arbitration process"). As previously noted, there is no litigation provision (or judicial reservation) in the Settlement Agreement – and the reason is simple: the parties intended and agreed to arbitrate any dispute with Judge Epstein. One need only review the entire Settlement Agreement in conjunction with

the Branover Certification to come to that inescapable conclusion. Honeywell provided no certification to the Trial Court to rebut the factual assertions contained in the Branover Certification.

B. The facts and circumstances surrounding the negotiation of the Settlement Agreement support SATEC's argument in favor of arbitration.

The legal principles that govern contract interpretation are well established. "Generally, the terms of an agreement are to be given their plain and ordinary meaning." M.J. Paquet, Inc. v. N.J. Dep't of Transp., 171 N.J. 378, 396 (2002). The interpretation of contract terms "are decided by the court as a matter of law unless the meaning is both unclear and dependent on conflicting testimony." Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 92 (App. Div. 2001).

A court faced with a disagreement over how to interpret a contract must first decide if an ambiguity exists. "An ambiguity in a contract exists if the terms of the contract are susceptible to at least two reasonable alternative interpretations. . . ." Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997). Therefore, in "interpreting a contract, a court must try to ascertain the intention of the parties as revealed by the language used, the situation of the parties, the attendant circumstances, and the objects the parties were striving to attain." Celanese Ltd. v. Essex Cnty. Improvement Auth., 404 N.J. Super. 514, 528 (App. Div. 2009).

At no point in either the April 4, 2025 Decision and Order or the May 13, 2025 Decision and Order did the Trial Court conclude that the Settlement Agreement

was in any way ambiguous. Once the Trial Court determined in the April 4, 2025 Order and Decision to refer the four (4) issues to arbitration, the matter was "final" for purposes of appellate review. R. 4:49-2. The Trial Court's determination thereafter to effectively "reconsider" the April 4, 2025 Order and Decision on May 13, 2024 was error - as April 5, 2025 Order and Decision was no longer interlocutory in nature. The matter should have been stayed at that point in time, as SATEC requested. Aa239. The Trial Court erred in not doing so, as Honeywell did not file a timely motion for reconsideration by April 24, 2025; nor did Honeywell timely appeal the April 4, 2025 Order and Decision. Accordingly, the Trial Court's actions in entering the May 13, 2025 Order and Decision (and thereby effectively "reconsidering" the April 4, 2025 Order and Decision) were error, and should be reversed.

Even if there is an ambiguity in the Settlement Agreement, this Court can review surrounding circumstances from 2009 (see Branover Certification) as to the intent of the parties - particularly concerning the removal of the contaminated soils. With respect to which, it was undisputed before the Trial Court that the parties' joint intent was, in fact, to remove the contaminated soils. As Branover sets forth in his unrebutted Certification, why else would the parties include a "at-risk" provision for soils excavation even before NJDEP approval? Aa16, ¶16.

Further, Branover submitted that, even before the settlement with Honeywell, SATEC's then-environmental firm, Hillman, sought to undertake groundwater injections in lieu of removing soils. That proposal was submitted to NJDEP, and rejected. Id. at ¶9. The Stattel Certification further confirms that natural attenuation of contamination is not possible with an active source (i.e., the contaminated soils) at the site. Aa146, ¶¶ 8 and 176. Thus, even if this Court were to find there were ambiguities in the Settlement Agreement, the issue of what the "scope of the remediation" should have been (contaminated soils excavation versus Honeywell's unilateral policy of injections), the "reasonableness" of Honeywell's environmental strategies and whether SATEC consents to those remediation strategies should nevertheless be transmitted pursuant to the "arbitration process" to the parties' designated Arbitrator.

In instances where there is any apparent ambiguity concerning the meaning of contractual terms, a court is permitted to consider extrinsic evidence beyond the "four corners" of the contract's text. As our Supreme Court has instructed:

> [W]e allow a thorough examination of extrinsic evidence in the interpretation of contracts. Such evidence may "include consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage, and the interpretation placed on the disputed provision by the parties' conduct." "Semantics cannot be allowed to twist and distort [the words'] obvious meaning in the minds of the parties." Consequently, the words of the contract alone will not always control.

Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 269 (2006) (alteration in original) (citations omitted). As such, "[a]court's objective in construing a contract is to determine the intent of the parties," and, in that quest, "'the court must consider the relations of the parties, the attendant circumstances, and the objects they were trying to attain.'" Id.at 320-21 (quoting Tessmar v. Grosner, 23 N.J. 193, 201 (1957)).

Honeywell did not provide any certifications to the Trial Court in response to the Branover Certification as to the parties' contractual "intent" for environmental remediation - i.e., the removal of the contaminated soils at the earliest possible instance; nor was an opposing certification provided by Honeywell as to the parties' "intent" as to arbitration for resolution of future disputes (i.e., the "arbitration process"). Therefore, the issue of whether what Honeywell undertook in 2016 (without SATEC's approval) and what Honeywell proposes in 2025 (also without SATEC's approval), is a violation of Honeywell's obligations under the Settlement Agreement (to both secure SATEC's consent and, in any event, to propose "reasonable" remedial environmental strategies) is an issue for the Arbitrator.

In summary, the Trial Court's April 4, 2025 Decision and Order found four (4) issues that were subject to the "arbitration process" contained in §2.4 of the Settlement Agreement:

1. Approved Costs of Remediation (§2.4);

2. SATEC's right to "advice and consent" with respect to Honeywell's submissions to NJDEP (§3.1 and §3.2);

3. SATEC's right to object to Honeywell's remediation strategies (historic and proposed) (§3.1 and §3.2); and

4. The reasonableness of Honeywell's proposed remediation strategy.

These four (4) arbitrable issues were clearly recognized by the plain language of the Trial Court's April 4, 2025 Decision and Order:

> (a) "Any remaining issues pertaining to the Approved Costs Remediation and methods by which Honeywell intends to remediate, pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, sent to binding arbitration in front of Retired Judge Epstein."
>
> (b) "The Court is satisfied that access to the Property is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that Defendant has raised issues with respect to the Approved Costs of Remediation, Defendants right to "advice and consent" and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" in proposing such remediation strategies."
>
> (c) "Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to Honeywell's request to access the Property and GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate, which shall be brought pursuant to the Settlement Agreement between the Parties."

Aa 60, April 4, 2025 Decision and Order (emphasis added). Those four (4) arbitrable issues should be referred to Judge Epstein for determination without further delay.

CONCLUSION

For the foregoing reasons, SATEC requests reversal of the Trial Court's May 13, 2025 Decision and Order as to the scope of the parties' arbitration before Judge Epstein. SATEC submits that the scope of the arbitration should include the four (4) arbitrable issues contained the Settlement Agreement, as identified by SATEC and as expressly recognized by the Trial Court's April 4, 2025 Decision and Order:

> (a) "Any remaining issues pertaining to the Approved Costs Remediation[7] and methods by which Honeywell intends to remediate,[8] pursuant to the Settlement Agreement, should be mediated, and if unsuccessful, sent to binding arbitration in front of Retired Judge Epstein."
>
> (b) "The Court is satisfied that access to the Property is required in order for Honeywell to fulfill its duties and obligations under the Settlement Agreement but also acknowledges that Defendant has raised issues with respect to the Approved Costs of Remediation, Defendants right to "advice and consent"[9] and to object to Honeywell's proposed course of conduct, and Honeywell's "reasonableness" in proposing such remediation strategies."[10]
>
> (c) "Defendants' Motion to Compel Arbitration is hereby DENIED in part with respect to Honeywell's request to access the Property and GRANTED in part with respect to any other issues related to the Approved Costs of Remediation and methods by which Honeywell intends to remediate, which shall be brought pursuant to the Settlement Agreement between the Parties."

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[7] Arbitrable Issue Number 1.
[8] Arbitrable Issue Number 2.
[9] Arbitrable Issue Number 3.
[10] Arbitrable Issue Number 4.

Aa 60, April 4, 2025 Decision and Order (emphasis added).

The benefit of SATEC's bargain under the Settlement Agreement included expeditious resolution of disputes - not drawn-out, expensive litigation but instead mediation and arbitration with a designated mediator/arbitrator. Arbitration was designed to level the playing field, and prevent Honeywell from "bullying" SATEC (Aa16, Branover Cert, ¶16B) with incessant court proceedings and endless costs and expenses. Honeywell should be compelled to uphold its end of the contractual bargain, and arbitrate the four (4) areas of dispute before Judge Epstein - exactly as the Settlement Agreement provides.

Accordingly, the four (4) areas of arbitrable issues identified in the April 4, 2025 Decision and Order should be referred to Judge Epstein for determination without further delay – such that SATEC's Property can finally (after sixteen (16) years) be properly remediated by Honeywell, and the contaminated soils removed.

Respectfully Submitted,

/s/ Patrick J. Spina
PATRICK J. SPINA, ESQ.
ATTORNEY FOR APPELLANTS,
SATEC, INC., AND SATEC REAL ESTATE HOLDING, LLC

Dated: November 13, 2025

---------- X

HONEYWELL INTERNATIONAL INC.,

Plaintiff-Respondent/Cross-Appellant,

vs.

SATEC, INC.; SATEC REAL ESTATE HOLDING, LLC,

Defendants-Appellants/Cross-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-003317-24

Civil Action

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, UNION COUNTY, ORDER ENTERED MAY 13, 2025

Docket No. in The Court Below:
UNN-C-14-25

Sat Below:
Hon. Robert J. Mega, P.J. Ch.

---------- X

REPLY BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT/CROSS-APPELLANT HONEYWELL INTERNATIONAL INC.

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Dated: November 20, 2025

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TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules and Regulations

PRELIMINARY STATEMENT

Plaintiff-Respondent/Cross-Appellant Honeywell International Inc. ("Honeywell") is the person responsible for conducting the remediation ("PRCR") of a contaminated property located in Union Township ("Site") pursuant to an Administrative Consent Order ("ACO") issued by the New Jersey Department of Environmental Protection ("DEP") and a January 6, 2009 Settlement Agreement ("Agreement"), entered into with Defendants-Appellants/Cross-Respondents SATEC Real Estate Holding, LLC and SATEC, Inc. (collectively, "SATEC"). The Agreement designated Honeywell as the PRCR and requires SATEC to permit Honeywell reasonable access to the Site to conduct remediation. Years later, SATEC refused Honeywell entry to the Site, preventing Honeywell from completing the cleanup. To resolve these types of disputes, the Legislature established a process for a PRCR to obtain access ("Access Statute"). As required by the Access Statute, Honeywell filed a summary action which the trial court granted in its entirety. The trial court erred, however, by allowing SATEC's non-germane claims to be joined to a summary proceeding and staying the matter pending resolution of arbitration. The trial court's rulings are inconsistent with the law and have improperly curtailed Honeywell's statutory obligation to perform the cleanup. Accordingly, this Court should lift the trial court's stay.

PROCEDURAL HISTORY

On February 3, 2025, Honeywell filed a one-count Verified Complaint ("Complaint") and Order to Show Cause ("OTSC") pursuant to the Access Statute. Aa107. SATEC responded by filing a non-germane cross-motion to compel arbitration. Ra266. On March 12, 2025, SATEC filed an Answer and Counterclaims, without leave of court. Aa122. On April 4, 2025 ("April 4th Order") the trial court granted Honeywell's application in its entirety and partially granted SATEC's cross-motion only with respect to those issues specifically provided for in the Agreement. Aa60.

On April 23, 2025, Honeywell filed a motion to amend its Complaint in response to SATEC's counterclaims and SATEC filed a cross-motion in aid of litigant's rights arguing any disputes between the parties were subject to arbitration. Aa225, 248. Honeywell filed its own motion in aid of litigant's rights, arguing SATEC's failure to grant access to the Site violated the April 4th Order. Ra298. On May 13, 2025, the trial court denied Honeywell's motion to amend its Complaint and partially granted SATEC's cross-motion, finding only disputes over Approved Costs of Remediation are arbitrable and that SATEC must grant Honeywell access to the Site in accordance with the April 4th Order, and staying the matter pending resolution of the arbitration ("May 13th Order"). Aa64, 73. On May 23, 2025, the trial court reiterated that SATEC must provide

Honeywell access to the Site and continued the stay ("May 23rd Order"). Ra297. SATEC's position is that the trial court's order precludes Honeywell from accessing the Site for the purpose of conducting remediation. Ra283.

SATEC filed a Notice of Appeal of the trial court's May 13th Order and Honeywell cross-appealed. Aa74, 99. The parties are currently arbitrating whether any costs expended by Honeywell for the cleanup do not qualify as "Approved Costs of Remediation." Aa247.

STATEMENT OF FACTS

The relevant factual background to Honeywell's cross-appeal is as follows.[1] In early 2010, Honeywell began conducting remedial activities at the Site. See Ra011. Under Section 3.8 of the Agreement, SATEC is required to provide Honeywell, the designated PRCR, with reasonable access to the Site. Aa9. Between 2010 and 2016, Honeywell was provided with unfettered access to conduct its environmental remediation of the Site. See Ra011-82. In 2016, with SATEC's and the Licensed Site Remediation Professional ("LSRP") retained for the Site's approval, Honeywell conducted the first round of in-situ injections to remediate the chlorinated volatile organic compounds ("cVOCs") present in the Site's soil and groundwater. Ra270. Multiple rounds of post-

[1] In addition to the below, Honeywell relies on the Counterstatement of Facts outlined in its Respondent/Cross-Appellant Brief.

injection groundwater sampling were subsequently performed at the Site. Ra271, 295. While the first round of injections substantially reduced cVOC concentrations, additional injections are required. Ra288-89. Accordingly, the LSRP retained for the Site submitted a Permit-By-Rule Discharge to Groundwater Authorization ("Discharge to Groundwater Permit") request to DEP to conduct additional injections, which was approved on August 21, 2023. Ra271, 238. SATEC was informed of the need for additional injections and was given a copy of the Discharge to Groundwater Permit. See Ra248, 271.

Since commencing its cleanup of the Site, Honeywell has kept SATEC informed by providing SATEC with quarterly reports summarizing the remedial activities conducted at the Site. Ra011. Honeywell and its representatives have also met with SATEC several times over the years to discuss the remedial strategy, and communicated with SATEC regularly regarding the remedial status and submittals to DEP. See, e.g., Ra187, 294-95. In 2022, SATEC began to express its displeasure regarding the remediation. Aa35. On June 7, 2023, Honeywell requested a meeting with SATEC to discuss the need for additional injections after obtaining approval from DEP. Ra295. Following this request, SATEC's counsel wrote to Hon. Mark B. Epstein, J.S.C. (Ret.), the designated arbitrator, asserting that Honeywell breached the Agreement but without identifying a specific provision of the Agreement that was purportedly breached.

Aa42. To alleviate SATEC's concerns, Honeywell's LSRP and remediation manager met with SATEC's environmental consultant, Gibson & Stattel Environmental, Inc. ("G&S") on October 11, 2023, to discuss the remediation. Ra295. The parties agreed on Honeywell's remedial approach at this meeting. Ibid. Months later, Honeywell's LSRP received two letters from G&S, which proposed additional sampling and notified Honeywell that SATEC disagreed with its remedial approach, contrary to G&S's statements at the October 11, 2023 meeting. Aa44, 46.

On April 18, 2024, Honeywell's counsel requested access to the Site in accordance with the Access Statute and applicable DEP regulations ("Initial Request"). Ra244-50. After receiving no response from SATEC, Honeywell sent a second request on August 6, 2024. Ra251-55. Thereafter, Honeywell continued to request access from SATEC and offered to discuss the remediation efforts further, but SATEC failed to respond. Ra273. SATEC's refusal to cooperate caused Honeywell to enter into an ACO with DEP to revise the schedule for completing remediation of the Site. Ra274-80. Under the ACO, Honeywell is required to complete the remediation by May 7, 2030. Ra276. Due to SATEC's refusal to respond to Honeywell's requests, Honeywell was required, by the Access Statute and DEP regulations, to seek an access order from the Superior Court via a summary proceeding.

ARGUMENT

THE TRIAL COURT'S MAY 13, 2025 ORDER STAYING THE MATTER PENDING RESOLUTION OF THE ARBITRATION HAS PREVENTED HONEYWELL FROM SATISFYING ITS STATUTORY AND CONTRACTUAL OBLIGATIONS (Aa64)

Honeywell's cross-appeal arises from the trial court's May 13th Order staying the matter pending resolution of the arbitration, which has improperly prevented Honeywell from accessing the Site to conduct remediation. Aa64. The Access Statute sets forth a specific protocol for obtaining access when necessary to investigate and remediate contamination if good faith efforts to obtain access are unsuccessful. To expedite cleanups, the Access Statute directs a PRCR to seek an order from the court directing the property owner to grant reasonable access and the court may proceed in a summary manner. N.J.S.A. 58:10B-16(a)(1); see also N.J.A.C. 7:26C-8.2(d). In accordance with its statutory and regulatory obligations, Honeywell filed a summary action to obtain access to the Site to complete its environmental cleanup. As part of the relief sought by Honeywell in its Complaint, Honeywell requested access to the Site for the purpose of "installing monitoring wells and **conducting groundwater injections** . . . ." Aa108 (emphasis added). Once this relief was granted by the trial court in its April 4th Order, the summary action was fully adjudicated and SATEC was required either to seek leave of court to assert its contractual claims or file a separate action. The trial court erred by allowing SATEC to proceed

with its non-germane contractual claims once the issue of access was decided.

While the trial court's May 23rd Order stated that "[t]he May 13, 2025 Order did not stay the April 4, 2025 Order . . . ," the May 13th Order effectively stayed Honeywell's right to access the Site to complete its cleanup until the arbitration is concluded. See Ra304. To complicate matters further, the trial court ruled that Honeywell is precluded from making any further applications to enforce the April 4th Order until the arbitration is resolved. See Aa64. As a result of the trial court's conflicting orders, SATEC has taken the indefensible position that Honeywell may enter the Site to conduct "environmental testing," but not to conduct environmental remediation. SATEC's Reply Brief ("Appellant's Brief") at 5. SATEC's argument is flawed and unsupported by the controlling law, DEP regulations, and the Agreement. More importantly, the trial court's ruling has left Honeywell with no avenue to complete the cleanup as required by the ACO.[2] Accordingly, this Court should lift the trial court's stay.

A. **Honeywell Complied with the Requirements of the Access Statute and Applicable Regulations and Therefore Should be Granted Access to the Site** (Aa64)

Pursuant to the Access Statute, if good-faith efforts to obtain access are

[2] At no time has SATEC ever indicated how it will be harmed if the injections proceed. The likely result is that SATEC's property will be cleaner. Moreover, if the injections don't work, Honeywell remains obligated to complete the remediation. SATEC's objections make no sense.

unsuccessful, the PRCR **must** seek an order from the Superior Court directing the property owner to grant access to the property. N.J.S.A. 58:10B-16(a)(1); see also N.J.A.C. 7:26C-8.2(d). Here, Honeywell took "all appropriate actions . . . to obtain access to property . . . which [were] necessary to implement the remediation." N.J.A.C. 7:26C-8.2(b). SATEC asserts that Honeywell failed to engage in good faith efforts to reach an agreement by failing to notify SATEC of its submittals to DEP or conduct soil and groundwater sampling between 2022 and 2024. Appellant's Brief at 22. Notwithstanding the fact that SATEC does not provide any citation to the record to support its contention, the record reflects the opposite. Rather, Honeywell has repeatedly communicated with SATEC and its representatives regarding the need for additional injections and notified SATEC of its submittals to DEP. For example, Honeywell has, among other things: (1) provided a scope of work to SATEC for the additional injections; (2) met with G&S to discuss the additional injections after DEP approved the Discharge to Groundwater Permit; and (3) provided a copy of DEP's Discharge to Groundwater Permit in its Initial Request. Ra248, 271.

In adjudicating a summary action under the Access Statute, the trial court is afforded limited discretion and is required to promptly issue an order for access if "reasonable and necessary" to remediate contamination. N.J.S.A. 58:10B-16(b)(2). "The presence of an applicable department oversight

document [(i.e., an ACO)] or a remediation obligation pursuant to law involving the property for which access is sought shall constitute **prima facie** evidence sufficient to support the issuance of an order." N.J.S.A. 58:10B-16(b) (emphasis added).

After repeated efforts to gain access were unsuccessful, Honeywell was left with no other choice but to file a summary action, as required by the Access Statute, to avoid missing any further DEP deadlines. As the PRCR for the Site, Honeywell has an obligation under the Agreement, applicable environmental laws and regulations, and the ACO to remediate the Site. In acknowledgment of Honeywell's remedial obligations, the trial court's April 4th Order granted Honeywell's application in its entirety. Aa60. By staying the litigation, the trial court has permitted SATEC to thwart the April 4th Order and frustrate the purpose and spirit of the Access Statute, which mandates that disputes over access are resolved expeditiously via summary proceedings. See N.J.S.A. 58:10B-16(a)(1). Unable to dispute that Honeywell satisfied the specific protocol for obtaining access to investigate and remediate contamination, SATEC contends that the Settlement Agreement "provides that both Honeywell and [DEP] were granted 'reasonable access' . . ." and that "Honeywell did not need to resort to the Access Statute or the Chancery Division." Appellant's Brief at 17. Of course, SATEC conveniently ignores the fact that it was SATEC who

would not grant Honeywell reasonable access, thereby forcing Honeywell to file its summary action, as required by the Access Statute and DEP regulations. N.J.S.A. 58:10B-16(a)(1); see also N.J.A.C. 7:26C-8.2(d).[3]

SATEC's contention that Honeywell cannot rely on PPG Industries, Inc. v. Mid-Newark LP, No. C-137-15 (N.J. Super. Nov. 18, 2016), because there was no agreement in place between the parties in PPG Industries, Inc., is also misplaced. Appellant's Brief at 22. Honeywell does not dispute that the parties have an Agreement, and in fact relies on the Agreement in requesting access. Like the PRCR in PPG Industries, Inc., Honeywell engaged in substantive negotiations before filing its summary action. Aa114-15; Ra273. Notwithstanding Honeywell's good-faith efforts, "nothing in the statute requires plaintiff to. . . attempt to meet every requirement demanded by the defendants in negotiation." No. C-137-15 at 8. Moreover, the ACO entered into between Honeywell and DEP constitutes "prima facie evidence sufficient to support the issuance of an [access] order." N.J.S.A. 58:10B-16(b).

Unable to refute the black letter law and the Agreement's plain and unambiguous terms, SATEC conveniently ignores Honeywell's clear

[3] SATEC's contention that Honeywell was required to file an action in the Law Division in the form of a motion in aid of litigant's rights is also unavailing. Appellant's Brief at 4. Both the Access Statute and DEP regulations **direct** Honeywell to bring a summary action. N.J.S.A. 58:10B-16(a)(1); see also N.J.A.C. 7:26C-8.2(d).

obligations as the PRCR and attempts to impermissibly expand the scope of arbitration beyond the limited dispute resolution process described in Section 2.4 of the Agreement. To support this assertion, SATEC baselessly contends that the environmental remedy for the Site must be re-evaluated 25 years later by an arbitrator before the issue of access can be resolved. See, e.g., Appellant's Brief at 2-3. As discussed above, SATEC's contention is not relevant to Honeywell's cross-appeal because a proceeding under the Access Statute is an extremely limited action which only requires a court to determine whether it is reasonable and necessary for the party seeking access to complete the remediation.

Throughout its brief, SATEC makes several misrepresentations in a desperate attempt to deny Honeywell's legal and contractual right to access the Site to conduct remediation. Perhaps the most glaring example of SATEC's distortion of the record below is SATEC's contention that "[t]he Court granted Honeywell 'access' to SATEC's Property – but only for 'environmental testing' and not to undertake 'environmental remediation.'" Appellant's Brief at 5. This contention is a blatant misrepresentation of the trial court's decision and is contrary to the law governing the remediation of contaminated sites in New Jersey. In fact, the trial court actually held in its April 4th Order that "N.J.S.A. 58:10B-16(b)(2) permits the issuance of an Order granting access to the subject Property that is reasonable and necessary **to remediate contamination**." Aa62

(emphasis added). The trial court went on to explain that Honeywell has a right to access the Site to conduct **remediation**, stating that "[Honeywell] is merely seeking access to the Property to perform environmental investigations and **remediations** pursuant to [its] responsibilities under the [Agreement], and same is not required to be arbitrated under the terms of the [Agreement], the Court is satisfied that [Honeywell's] application is proper . . ." and "that [Honeywell] has established that access to the [Site] is reasonable and necessary to **remediate** the cVOCs." Aa62-63 (emphasis added).

SATEC also misstates the record in its contention that the April 4th Order did not grant Honeywell's OTSC in its entirety. Appellant's Brief at 18. This too is wholly unsupported by the record, and notably SATEC does not provide any citation to the record to support its contention. Rather, the April 4th Order states, in no uncertain terms, that Honeywell's "Order to Show Cause is hereby GRANTED." Aa60. If the trial court's intention was to only grant Honeywell's OTSC with respect to "environmental testing," it would have expressly done so by distinguishing what relief was being granted and what was being denied. The Access Statute provides that a court may enact "reasonable conditions as part of the access order," but no such conditions were imposed on Honeywell. See N.J.S.A. 58:10B-16(b); Aa60.

The trial court reached the same conclusion in its May 13th and May 23rd

Orders, stating that "this Court issued an Order granting [Honeywell's] request for access by way of an Order on April 4, 2025," and that the "April 4, 2025 Order has not been modified, and the relief granted therein stands . . . ." Aa73; Ra304. Accordingly, SATEC's contention that Honeywell can only access the site for "environmental testing"[4] is without merit and lacks any support in the record. As the trial court correctly determined, access to the Site is both reasonable and necessary to **remediate the contamination** present at the Site.

SATEC further contends that Honeywell's reference to the Access Statute and related regulations is "nothing more than a red herring, intended to avoid discussion of Honeywell's contractual obligations to SATEC under the [Agreement]." Appellant's Brief at 17; see also Appellant's Brief at 23. This argument is nonsensical. The Access Statute and its regulations direct Honeywell to file a summary action if good faith efforts fail to result in an agreement for access to the Site. Honeywell does not dispute that it has an obligation under the Agreement to remediate the Site. In accordance with its obligations, Honeywell engaged in good faith efforts to gain access and SATEC refused to comply. Honeywell only filed its summary action after talks broke down, as required by the governing law. See N.J.S.A. 58:10B-16(a)(1). The trial

[4] In fact, the term "environmental testing" is never used in any of the trial court's three orders.

court erred, however, by allowing SATEC to adjudicate issues regarding Honeywell's purported breach of the Agreement, and instead the matter should have been concluded once Honeywell's application was granted in its entirety.

B. The Trial Court Should Have Barred SATEC from Joining Non-Germane Issues to a Summary Proceeding (Aa64)

The Access Statute states that "an action for an access order shall not be joined with non-germane issues . . . ." N.J.S.A. 58:10B-16(b). A summary proceeding is meant to expedite litigation, and summary proceedings filed under the Access Statute are no exception. See, e.g., Beazer East, Inc. v. Morris Kearny Assocs. Urban Renewal, LLC, No. A-0756-22 (App. Div. Nov. 14, 2024) (slip op. at 1); see also Cnty of Bergen v. S. Goldberg & Co., 39 N.J. 377, 380 (1963). "It is for this reason that no counterclaim or cross-claim may be asserted without leave of court." Perretti v. Ran-Dav's Cnty. Kosher, Inc., 289 N.J. Super. 618, 623 (App. Div. 1996). Accordingly, SATEC's additional claims unrelated to the right to access were barred from being joined with the instant action.

SATEC asserts several claims unrelated to access to the Site, including its arguments related to Honeywell's remedial strategy, costs, SATEC's right to advice and consent, whether Honeywell acted in good faith, and whether Honeywell acted reasonably. Aa62-63, 135-42. Under the Access Statute, the trial court was precluded from adjudicating any claims unrelated to the issue of access. SATEC states that it "properly raised the issue of . . . Honeywell's

alleged breach [of the Agreement]." Appellant's Brief at 23. However, this argument is directly contrary to the Access Statute and SATEC offers no support for such contention. Throughout its brief, SATEC wrongfully argues that the true issue at the subject of this action is not access, but rather Honeywell's remedial methods. See, e.g., Appellant's Brief at 16. The Access Statute was designed for the purpose of swiftly adjudicating issues related to access so that there is no delay in remediating contaminated properties. Accordingly, the trial court erred by entertaining SATEC's claims and relatedly staying the matter after resolving the sole issue at the subject of Honeywell's summary proceeding. Thus, SATEC should not have been permitted to frustrate the legislative intent behind the Access Statute, and by doing so SATEC and the trial court have prevented Honeywell from accessing the Site to complete the cleanup.

CONCLUSION

For the foregoing reasons, Honeywell respectfully requests that this Court reverse the trial court's stay so Honeywell may continue its cleanup of the Site.

Respectfully submitted,

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