PREPARED BY THE COURT

GOODMAN NORTH AMERICAN PARTNERSHIP HOLDINGS, LLC, Plaintiff, v. LINDEN PROPERTY HOLDINGS, LLC, GAF CORPORATION, GAF CHEMICALS CORPORATION, RONNIE HEYMAN, CARL ECKARDT, CELESTE LEVIN, JASON POLLACK, JOHN DOES 1-3, and XYZ CORPORATIONS, A-C, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO.: UNN-L-2919-17 CIVIL ACTION **STATEMENT OF REASONS**

Barry J. Muller, Esq. (Fox Rothschild LLP) for Plaintiff, Goodman North American Partnership Holdings, LLC

Jaimee Katz Sussner, Esq. (Sills Cummis & Gross P.C.) for Defendants, Linden Property Holdings, LLC, GAF Corporation, GAF Chemicals Corporation, Ronnie Heyman, Carl Eckardt, Celeste Levin, and Jason Pollack

The Honorable Robert J. Mega, J.S.C.

STATEMENT OF REASONS

Introduction

This matter comes before the Court on defendants, Linden Property Holdings, LLC ("LPH"), GAF Corporation ("GAF Corp."), GAF Chemicals Corporation ("GAF Chemicals"), Ronnie Heyman ("Mr. Heyman"), Carl Eckardt ("Mr. Eckardt"), Celeste Ms. Levine ("Ms. Levine"), and Jason Mr. Pollack ("Mr. Pollack") (collectively "Defendants") motion to disqualify Fox Rothschild LLP (the "Fox Rothschild Firm") from representing plaintiffs, Goodman North American Partnership Holdings, LLC ("Goodman" or "Plaintiff") in the underlying litigation, due to an alleged conflict of interests with Mark Mr. Hall, Esq. ("Mr. Hall"), former associate at Riker Danzig Scherer Hyland Perretti LLP ("Riker Danzig") and current partner at Fox Rothschild. Defendants' motion is opposed.

Facts

The following salient facts are derived from the parties' submissions, relevant exhibits attached thereto, and the oral arguments of counsel.

The underlying matter arises out of an unsuccessful real estate transaction between LPH and Goodman. See Certification of Jaimee Katz Sussner ("Sussner Cert."), Ex. A ("Cmplt."). Plaintiff's Complaint was filed under seal on or about August 8, 2017. Id. As alleged therein, Goodman was to purchase the property located in Linden, New Jersey (the "Subject Property") from LPH, the current owner. Id. at ¶¶ 1-2.

The Subject Property came into LPH's possession through a convoluted series of corporate mergers, name changes, and stock transfers. The relevant history of the corporate entities and the Subject Property is summarized as follows:

International Specialty Products ("ISP") was formed in 1991 as a subsidiary of GAF Chemicals. ISP Environmental Services Inc. ("ISP Environmental"), a subsidiary of ISP was also formed in 1991. GAF Chemicals owned the Subject Property at the time and transferred it to ISP Environmental in 1991. In early 1991, ISP and ISP Environmental were spun off from GAF Chemicals and other entities in the G-I/GAF corporate family. On October 31, 2000, GAF merged into its direct subsidiary G-I Holdings, which in turn merged into its direct subsidiary G Industries Corp., which then merged into its direct subsidiary GAF Fiberglass Corporation, formerly known as GAF Chemicals (GAF Chemicals changed its name to GAR Fiberglass Corporation on December 24, 1996). Following the merger of G Industries Corp. into GAF Fiberglass Corporation, the company's name was changed to GAF. Subsequently, on November 13, 2000, the company then known as GAF merged into its direct subsidiary, GAF Building Materials Corporation, whose name changed in the merger to G-I Holdings, Inc. In August 2011, Ashland Inc. (now Ashland LLC) ("Ashland") purchased all of the outstanding shares of common stock of ISP. As part of that transaction, ISP Environmental conveyed the Subject Property to LPH.

In its Complaint, Plaintiff contends that Defendants fraudulently induced it to enter into a contract to purchase the Subject Property by "misrepresenting and concealing labilities, including potential liabilities, for off-site contamination arising from environmental conditions relating to the Property, which were known to Defendants." Sussner Cert., Ex. A ("Cmplt.") at ¶ 2. Specifically, Goodman alleges that Defendants knew, but did not disclose that (i) "GAF

Chemicals and [ISP] had been identified by the [Environmental Protection Agency ("EPA")] as potentially responsible parties for certain environmental contamination related to the [Subject Property], and that there were either pending lawsuits, administrative actions, and/or unresolved claims impacting the [Subject Property]," and (ii) claims that LPH was responsible for off-site contamination issues at the [Subject Property] under the [1989 Administrative Consent Order, as amended in 2006 ("AOC"), issued by the New Jersey Department of Environmental Protection ("NJDEP"). Id. at ¶¶ 60, 63. Plaintiff contends that it was Defendants' objective to "dupe [it] into purchasing the [Subject Property] and unwittingly, assu[me] the substantial, undisclosed environmental labilities." Id. at ¶ 3. As a result, Goodman alleges that it incurred over $2.2 million in due diligence costs and expenses, which it would not have incurred had Defendants revealed the aforementioned environmental conditions and liabilities. Id. at ¶ 4. Plaintiff also contends it is owed monies due to it under the real estate contract, damages from lost business opportunities, and other damages. Id. at ¶ 6.

On January 5, 2001, G-I filed bankruptcy. Pursuant to Bankruptcy Court Orders dated January 11, 2001 and March 13, 2001, the Bankruptcy Court approved the employment and retention of Riker Danzig and Weil Gotshal & Manges LLP as co-counsel for G-I. Through the course of the bankruptcy G-I also retained a number of special counsel, including but not limited to McCarter & English LLP, who served as special environmental insurance counsel and Arnold & Porter LLP (now Arnold & Porter Kaye Scholer LLP) who served as special environmental counsel for dealing with certain claims asserted by the DOI, NOAA, EPA, and the State of Vermont. Riker Danzig continues to represent G-I in the Bankruptcy Case proceedings. The Riker Danzig litigation team has been led by Dennis O'Grady ("Mr. O'Grady") since January 2001. Defendants have included a certification from Mr. O'Grady along with their moving papers, which describes his firm's role as well as Mr. Hall's involvement in representing G-I.

Mr. Hall joined Riker Danzig as an entry-level associate in September 2000 and began working in the Bankruptcy Group. Mr. Hall was assigned to G-I's bankruptcy case shortly after the case was filed in January 2001. Initially Mr. Hall performed a support role in the Bankruptcy Case, but according to Mr. O'Grady's Certification he ultimately acted as second chair to Mr. O'Grady in overseeing, counseling, advising, directing, and conducting G-I's representation before the Bankruptcy Court. As such, Mr. Hall assumed a significant and central role exercising day-to-day responsibility for numerous aspects of the case, including drafting and filing of

pleadings and participating and assisting in the analysis and negotiation of environmental issues with, among others, the EPA, NOAA, DOI, and the NJDEP, including their respective environmental proofs of claim concerning the Subject Property. Over time, the Bankruptcy Case became almost the full-time focus of Mr. Hall's work at Riker Danzig, and Mr. Hall along with Alexa Richman-LaLonde became gatekeepers and historians of the complex events that defined the environmental issues in the Bankruptcy case, which continued until his departure from Riker Danzig to Fox Rothschild in November 2016.

Mr. Hall's familiarity with the Bankruptcy case and its environmental elements were so extensive that he eventually became a clearing house for all communications, documents and other information, including legal memoranda produced by outside and in-house counsel for G-I, that related to G-I's potential environmental liabilities, including those affecting the property. Further, Mr. Hall and O'Grady were included on virtually all emails and other correspondence that pertained to the Bankruptcy Case, most of which were also exchanged with G-I's in-house legal team that specifically included Defendants Ms. Levine and Mr. Pollack. At times, Mr. Hall had near daily meetings, phone calls and other communications with Mr. Pollack and Ms. Levine, including with respect to the resolution of the environmental proofs of claim submitted by the United States and the NJDEP in the Bankruptcy Case relating to the Subject Property. Defendants contend that these communications routinely, and necessarily, involved the exchange of confidential and privileged information. Mr. Hall's dealings with G-I continued long after the Confirmation Order, confirming the Bankruptcy Plan was entered in 2009, and remained ongoing at the time of this departure for Riker Danzig in 2016. During those seven years, Mr. Hall was actively involved in resolving the proof of claim that had been filed by the NJDP in the Bankruptcy Case, including those relating to the Subject Property.

Mr. O'Grady's certified that Riker Danzig provided counsel to G-I in the Bankruptcy Case through confirmation of G-I's chapter 11 bankruptcy plan on November 12, 2009, and has continued to do so ever since in connection with a wide array of proofs of claims, including environmental proofs of claim. These matters have included the overall handling and ultimate resolution of (i) environmental proofs of claim filed by the United States on behalf of the EPA, the NOAA, and DOI in connection with numerous properties, including the Subject Property, and (ii) environmental proofs of claim filed by the NJDEP in connection with numerous properties, including the Subject Property. While the Weil Firm assumed primary responsibility

for, among other things, negotiating, drafting, and conforming the Bankruptcy Plan for G-I, Riker Danzig focused on G-I's environmental liabilities and environmental proofs of clam that had been submitted in the Bankruptcy case, including proof of claim filed by the DOJ, EPA, NOAA and the NJDEP.

Mr. O'Grady further certified that between 2001 and 2009 Riker Danzig, along with Mr. Hall, "assisted with almost every single aspect of G-I's case. Riker Danzig summarized its representation of G-I in its Final Fee Application to the Bankruptcy Court as follows:

> Riker Danzig also provided substantial services in connection with the Debtors' numerous environmental obligations and claims, including reviewing and analyzing and communicating with internal and external counsel regarding potential claims, liabilities and recoveries related to the Debtors' environmental sites. Riker Danzig analyzed over a hundred sites pertaining to G-I's global environmental strategy and participated in negotiations and settlement discussion with various potentially responsible parties, governmental entities and insurers, including significant discussion with the Environmental Protection Agency, which lead to a critical compromise of the EPA's claims in the Chapter 11 case, helping clear the path to the Debtors; ultimate reorganization. The resolution and reduction of G-I's potential environmental liabilities was critical to the Debtors' successful organization.

Riker Danzig's total compensation for fees and expense throughout the nine year period form the filing of the Bankruptcy Case to the entry of the Confirmation Order was more than $15 million, and fees and expenses continued to be incurred through Mr. Hall's departure in 2016.

Through the entry of the Confirmation Order in the Bankruptcy Case, Riker Danzig attorneys and paraprofessionals devoted a total of 49,938.5 hours to the representation of G-I. Mr. Hall's billable hours alone constituted 32.6% of the amount of billable hours billed by all of Riker Danzig's attorneys.

On November 17, 2016, Fox Rothschild issued a press release announcing that Mr. Hall had joined the firm as a partner in the firm's bankruptcy department.

Fox Rothschild filed the complaint in this action approximately ten months later, on August 8, 2017. Defendants certify that neither Fox Rothschild nor Mr. Hall sought Defendants' written consent to enable Fox Rothschild to represent Plaintiff in the case despite what they refer to as the "obvious conflict presented after Mr. Hall joined the firm." Defendants state that even if such a request had been made, neither G-I its affiliates nor it agents would have consented.

By letter dated October 20, 2017, Defendants' counsel wrote to Fox Rothschild to demand that the firm immediately cease its representation of Plaintiff in this matter. Fox Rothschild declined to do so.

Defendants filed the subject motion on January 17, 2018.

Plaintiff voluntarily dismissed GAF and GAF Chemicals from this action on February 8, 2018.

Parties' Arguments

Defendants argue that there is no question that Mr. Hall received relevant, privileged and confidential information during his years representing G-I, and is intimately familiar with facts that are relevant and material to the underlying litigation. Defendants contend that Mr. Hall represented G-I while at Riker Danzig, and his new firm, Fox Rothschild, is representing Plaintiff in a matter substantially related to the matter that Mr. Hall worked on at Riker Danzig, and Plaintiff's interests are materially adverse to the interests of G-I (the successor of defendants GAF and GAF Chemicals), its affiliates and the individual Defendants. Therefore Defendants argue that Mr. Hall is disqualified under RPC 1.9(a).

Defendants also argue that the Mr. Hall's conflict is imputed to Fox Rothschild under RPC 1.10. Defendants contend that Mr. Hall had primary responsibility for representing G-I while at Riker Danzig, as he spent approximately fifteen years consistently and primarily providing counsel to G-I in the Bankruptcy Case, which continues to this day, about the environmental claims made by the EPA and NJDEP relating to the same Property for which Plaintiff now sues. Mr. Hall counseled, advised, drafted pleadings, conducted negotiations and interacted directly and regularly about highly privileged, proprietary and strategic matters with G-I's general counsel, Mr. Pollack, and in-house counsel, Levin, both of whom Mr. Hall's new firm is suing. Mr. Hall was heavily involved in representing G-I while at Riker Danzig in matters that concerned the same environmental matters, the same Property, the same remediation and Mr. Hall was instrumental in settling environmental claims by the same regulatory agencies concerning that property and its remediation (and as a result Mr. Hall was privy to voluminous amounts of privileged and confidential information associated therewith), which property, remediation, and claims now form the basis of the action. Has not complied with RPC 1.10(c)(3) by promptly proving notice of the conflict of interest to G-I, and had not required Defendants consent to Fox Rothschild's representation of Plaintiff. Therefore, Defendants conclude that

Plaintiff has not satisfied 1.10(c) and Fox Rothschild should be disqualified as well.

In opposition, Plaintiff argues that it is undisputed that GAF and GAF Chemicals ceased to exist since 2000, so their inclusion in this lawsuit is a legal impossibility. However to the extent that GAF and GAF chemicals corporation could somehow be considered direct predecessor of G-I, both companies have now been voluntarily dismissed from this litigation by Plaintiff.

Plaintiff notes that G-I has never been a party to this litigation. While at Riker Danzig, Mr. Hall never represented the remaining defendant LPH, Heyman, Eckerd, Ms. Levine, and Mr. Pollack. Mr. Hall certifies that he has never divulged attorney-client privileged communications, work-product or confidential information arising out of his representation of G-I. As a precautionary measure, and not required under the facts here, Fox Rothschild has implemented an ethical screen/wall between Mr. Hall and all attorneys/ staff working on any matter involving Plaintiff. All attorneys, paralegal, and staff of Fox Rothschild working on any matter involving Plaintiff have been instructed not to discuss Plaintiff or this litigation in Mr. Hall's presence, and Mr. Hall is prohibited from accessing any and all files pertaining to Plaintiff or this litigation. Mr. Hall certified that he has complied with the ethical screen/wall, and has only discussed non-confidential information regarding the alleged conflict and the instant motion at the direction other the firm's general counsel. Mr. Hall further certifies that he fully intends to abide by his ethical obligations pursuant to the Rule of Professional Conduct as well as the ethical screen/wall implement by Fox Rothschild.

Plaintiff additionally argues that there is no conflict because G-I is not a Defendant in this action. Therefore, Plaintiff contends that all elements of RPC 1.9(a) have not been met. Mr. Hall's only former client is G-I, now that GAF and GAF Chemicals have been voluntarily dismissed. Plaintiffs further contend that Defendants attempt to boot strap G-I with its past and present employees , representatives, agents, and affiliated entities is unpersuasive because RPC 1.13(a) makes clear that a "lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholder or other constituents." Even assuming G-I could somehow be viewed as a successor to GAF and GAF chemicals, there is no adversity because Plaintiff has voluntarily dismissed its claims against those entities. No adversity between plaintiff and G-I, no conflict under RPC 1.9.

Plaintiffs further argue that disqualification is a harsh discretionary remedy which must be used sparingly. Cavallaro v. Jamco Prop. Management., 334 N.J. Super. 557, 572 (App. Div. 200). Even if a conflict exists, disqualification is not automatically required. Rohm and Haas Co. v. American Cyanamid Co., 187 F. Supp. 2d 221, 229-30 (D.N.J. 2001). Plaintiff argues that is because our courts will not tolerate a litigant's use of a disqualification motion as a tactical maneuver. Plaintiff argue that Defendants have waived their right to bring the subject motion. Relying on the five-factor test laid in Alexander v. Primerica Holdings, Inc. 822 F. Supp. 1099 (D.N.J. 1993) note that waiver of the right to object to the conflict as result of undue delaying making the required option. Defendants knew about the alleged conflict since August 8, 2017. Instead of immediately moving to disqualify Fox Rothschild they filed their motion to dismiss and subsequently even agreed to a consent order setting both a briefing schedule and an argument date of February 2, 2018. Plaintiffs posit that now that Defendants have seen and responded to Plaintiff's opposition to the motion to dismiss they strategically seek to disqualify Fox Rothschild so that Plaintiff will be substantially prejudice and forced to incur substantial additional fees and costs to retain immediate new counsel, unfamiliar with the case, to cure the cause. Plaintiffs contend that Defendants were lying in wait, holding back their motion to disqualify as a trump card to be played as the most advantageous time. Plaintiff concludes that this is the precise type of gamesmanship and maneuvering our courts have sought to prevent.

In reply, Defendants argue that their pre-answer motion to disqualify is timely. Defendants contend that Plaintiff has not introduced any legal authority suggesting otherwise. Defendants argue that undue delay has only been found to preclude the disqualification of counsel with a conflict of interest where a disqualification motion is belatedly deposed of after years of litigation, on the eve or trial, to achieve a tactical advantage. See e.g. Dewey v. R.J Reynolds Tobacco Co, 109 NJ 201 (1988). Defendants contend this is not the case in the present matter, where Fox Rothschild received a written request to withdraw in October – two months after this lawsuit was filed – under threat of this precise motion.

Defendants further argue that dismissal of GAF and GAF chemical does not cure its conflict because Mr. Hall represented their successor, G-I. Defendants contend that Plaintiff's dismissal of entities constitutes an admission that a conflict exists. Simply removing a conflict-generating party form a case does not mean that the conflict evaporates. Cardona v. GMC, 942 F. Supp. 968, 975-76 (D.N.J. 1996).

Moreover, where two affiliated entities share the same legal department and operational infrastructure, those entities are treated as the same for purposes of a conflict of interests analysis. Cascasde Branding Innovation, LLC v. Walgreen Co. Shared Legal Department used by G-I and LPH included Ms. Levine, who is the head of environmental law for LPH and G-I, and who Plaintiff has asserted "is undisputedly the environmental lawyer with years of substantive involvement at and related to the LPH site" at issue in this case. The legal department also includes Mr. Pollack, who is general counsel to both LPH and G-I, and who had extensive communications with Mr. Hall regarding the issued involved in this lawsuit. Plaintiff does not dispute that Mr. Hall routinely exchanged privileged and confidential communication with Levin and Mr. Pollack when he was at Riker Danzig about matters at issue in this case, including with respect to environmental claims by the EPA and the NJDEP related to the Subject Property.

Additionally Plaintiffs argue that dismissal of GAF and GAF Chemicals doesn't cure Fox Rothschild's conflict with defendant Mr. Pollack and Levin. 1.13(a) provides that a lawyer like Mr. Hall representing an organization, like G-I, Mr. Hall be deemed to represent not only the organizational entities but also the members of its litigation control group. Litigation control groups includes agents and employees responsible for the determination of the organizational entity but also the members of its litigation control group. Furthermore, Defendants argue that the belated creation of an ethical wall does not cure the conflict.

Factual Findings and Legal Conclusions

The threshold inquiry before the Court is whether Defendants have waived their collective right to bring the instant disqualification motion.

Waiver is a "valid basis for the denial of a motion to disqualify." Rohm & Haas Co. v. Am. Cyanamid Co., 187 F. Supp. 2d 221, 229-30 (D.N.J. 2001) (citations omitted). A finding of waiver is justified:

> [W]hen a former client was concededly aware of the former attorney's representation of an adversary but failed to raise an objection promptly when he had the opportunity. In [this] circumstance, the person whose confidences and secrets are at risk of disclosure or misuse is held to have waived his right to protection from that risk

Id. (citing Alexander v. Primerica Holdings, Inc., 822 F. Supp. 1099, 1115 (D.N.J. 1993) (citations omitted)).

The assessment of whether a party moving for disqualification has waived its right to make a request requires an analysis of five factors:

(1) the length of delay in bringing the motion to disqualify;

(2) when the movant learned of the conflict;

(3) whether the movant was represented by counsel during the delay;

(4) why the delay occurred;

(5) whether disqualification would result in the prejudice to the non-moving party

Id. The essence of this analysis is whether the party seeking disqualification appears to use the disqualification motion as a tactical maneuver. Id. (citing Richardson-Merrell, Inc. v. Koller, 472 U.S. 424, 436 (1985).

In the present matter, the Court finds that Defendants' have not waived their right to bring the instant disqualification motion. Mr. Hall withdrew from Riker Danzig and joined Fox Rothschild in November 2016. On or about November 17, 2016, Fox Rothschild issued a press release announcing that Mr. Hall had joined the firm as a partner in the firm's bankruptcy department. Fox Rothschild filed Plaintiff's Complaint in this action on or about August 8, 2017. By letter dated October 20, 2017, Defendants' Counsel wrote to Plaintiff's Counsel to demand that Fox Rothschild immediately cease its representation of Plaintiff in this matter. By letter dated October 27, 2017, Plaintiff's Counsel declined to do so. Thereafter, Defendants filed their Motion to Dismiss. The parties agreed to a Consent Order which set forth a briefing schedule and oral argument date of February 2, 2018 before this Court. Plaintiff filed its opposition to Defendants' Motion to Dismiss on December 12, 2017. Plaintiff filed its reply brief on January 17, 2018. The instant motion was also filed on January 17, 2018.

Applying these relevant facts to the aforementioned five-factor test supports the Court's conclusion that Defendants have not waived their right to bring the subject motion. The motion to disqualify was filed 5 months and 9 days after Plaintiff filed its Complaint. While Defendants' motion was not filed immediately upon Fox Rothschild's refusal to withdraw from the instant matter and after the filing and complete briefing of Defendants' Motion to Dismiss, Defendants' notified Plaintiff of the alleged conflict in writing approximately 2 months and 12 days after the filing of the Complaint and threatened the filing of the instant motion should they choose not to

withdraw. Instances of similar and even longer delays that have not resulted in a finding of waiver. See e.g., Montgomery Academy v. Kohn, 82 F. Supp. 2d 312, 318-19 (D.N.J. 1999) ("The three-month time from filing of the lawsuit to filing the disqualification motion [which was filed after an answer was served] does not approach the magnitude of delay required by case law to find a waiver of the objections"); Mody v. Quiznos Franchise Co. 2012 N.J. Super. Unpub. LEXIS 1719 (App. Div. July 18, 2012). Despite Plaintiff's argument, that Defendants have waived their right to bring a disqualification motion, they cite no case law in support of this proposition.

The case at bar is unlike the facts of Dewey v. R.J. Reynoldds Tobacco Co., 109 N.J. 201 (1988) where the Court found undue delay where a disqualification motion was belatedly deployed after prolonged litigation, on the eve of trial , to achieve a tactical advantage. See also Alexander, 822 F. Supp. at 1115-16 (motion to disqualify counsel made more than three years into case when plaintiff knew from the time complaint was filed of counsel's alleged conflicts). The Court does not find that Defendants have acted in bad faith and does attribute any delay to an attempt to gain a tactical advantage over Plaintiff. While disqualification may prejudice Plaintiff, the non-moving party, in having to obtain new counsel, this concern is outweighed by determining whether or not an actual conflict of interests exists in this case. Accordingly, the Court will conduct the necessary analysis under RPC 1.9 and 1.10.

The Supreme Court of the State of New Jersey adopted the Rules of Professional Conduct in an effort to "provide clear, enforceable standards of behavior for lawyers." In Re Advisory Committee on Professional Ethics, Opinion No. 697, 188 N.J. 549 (2006) (quoting State v. Rue, 175 N.J. 1, 14 (2002)). It is well-established that New Jersey has a policy of ensuring strict compliance with its Rules of Professional Conduct. See Dewey, 109 N.J. 201 (1988). Disqualification of counsel is a "harsh discretionary remedy which must be used sparingly." Cavallaro v. Jamco Prop. Mgmy., 334 N.J. Super. 557, 572 (App. Div. 2000). A court is thus required to "balance competing interests, weighing the need to maintain the highest standards of the profession against a client's right freely to choose his counsel." Dewey, 109 N.J. 201, 218 (1988) (citations omitted). However, this choice is "limited in that there is no right to demand to be represented by an attorney disqualified because of an ethical requirement." Twenty-First Century Rail Corp. v. N.J. Transit Corp., 201 N.J. 264, 274 (2012) (quoting Dewey, 109 N.J. at 218).

RPC 1.9 provides that:

> (a) A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interest are materially adverse to the interest of the former client[.]

In City of Atlantic City v. Trupos, 201 N.J. 447. 462 (2010), the New Jersey Supreme Court explained that the prohibition of RPC 1.9(a) is triggered when two (2) factors coalesce: The matters between the present and former clients must be (1) "the same or...substantially related," and; (2) the interests of the present and former clients must be "materially adverse."

Matters are deemed to be "substantially related" if (1) the lawyer for whom disqualification is sought received confidential information from the former client that can be used against that client in the subsequent representation of parties adverse to the former client, or (2) facts relevant to the prior representation are both relevant and material to the subsequent representation. Id. at 464 and 467.

In the present matter, Plaintiff contends there is no conflict of interest under RPC 1.9(a) because G-I is not a named defendant in this action. Plaintiff argues that Defendants have therefore failed to meet the necessary elements of RPC 1.9(a) because Mr. Hall never represented GAF and/or GAF Chemicals. Alternatively, Plaintiff contends that even if GAF and GAF Chemicals could somehow be considered direct predecessors of G-I, both companies have been voluntarily dismissed from this litigation. Plaintiff argues that this action cures any potential conflict.

While GAF and GAF Chemicals were voluntarily dismissed from this action by Plaintiff, the Court is not convinced that the conflict has been cured. While at Riker Danzig, G-I was Mr. Hall's client. GAF and GAF Chemicals are the corporate predecessors of G-I. The tortured corporate history which ultimately resulted in the formation of G-I does not change the fact that G-I evolved out of or was the successor in interest to GAF and GAF Chemicals. ISP was formed in 1991 as a subsidiary of GAF Chemicals. ISP Environmental was formed as a subsidiary of ISP also in 1991. At or about that time, GAF Chemicals transferred the Subject Property to ISP Environmental. In August 2011, Ashland purchased all of the outstanding shares of common stock of ISP. As part of this transaction, ISP Environmental conveyed the Subject Property to LPH, which is within the G-I family of entities. Mr. Hall came into possession of privileged, confidential information that related not only to this "family" of corporate entities, but to claims

arising out of the possession of the Subject Property. Possession of the Subject Property remained in this family of companies and settling matters related to the Subject Property were key components of Mr. Hall's representation. Therefore, the Court finds that the parties are materially adverse in this matter.

The Court also recognizes that the record supports a finding that, G-I and LPH had a shared legal department, which included Ms. Levine and Mr. Pollack. Even though Defendants conceded at oral argument that RPC 1.13 is not exactly on point in this case and does not automatically require a finding that an attorney represents the individuals in a litigation control group, Ms. Levine and Mr. Pollack are being sued because they acted as counsel to the Defendant entities. Plaintiff attempts to use this relationship as a basis for suit, while simultaneously contending their position in the legal control group does not make them Mr. Hall's client for conflict purposes. Mr. Hall's rendering of counsel to G-I through Ms. Levine and Mr. Pollack, who were part of the shared legal department, unquestionably involved the exchange of confidential information; the same confidential information that forms the basis of Plaintiff's claims in the underlying litigation. The Defendant entities utilized a shared legal department which shared privileged, confidential information with Mr. Hall regarding the very issues at the heart of Plaintiff's Complaint. While Mr. Hall may not have represented either Ms. Levine of Mr. Pollack individually, the Court notes Mr. Hall had access to privileged information in his role as bankruptcy counsel. Accordingly, based on the foregoing, Mr. Hall's, past status a bankruptcy attorney to G-I, there exists a basis which creates an adverse relationship amongst the parties in this action, in contravention of the RPCs mentioned herein.

Mr. Hall was intimately involved in the matters at the crux of the underlying litigation. Moreover, it appears that claims raised in Plaintiff's complaint against Defendants in this action pertain to the same environmental matters for which Mr. Hall represented G-I during the period in question. It is undisputed that Mr. Hall had extensive familiarity with and involvement in G-I's negotiations to resolve claims advanced by the EPA, NOAA, and DOI, including those relating to the Subject Property. A review of Mr. Hall's time entries show that he worked on these specific topics on an almost daily basis for a least the first half of 2009, and continued to work on this matter until the claim of the EPA, NOAA, and DOI were settled in September 2009. A similar review of Mr. Hall's time entries and other documents reveal that Mr. Hall was extensively involved in resolving the NJDEP's environmental claims in the Bankruptcy Case

relating to various sites, including the Subject Property. The NJDEP claims asserted against G-I in the Bankruptcy Case were not settled until February 2016. The settlement was ultimately approved by the Bankruptcy Court in February 2016. Mr. Hall remained involved in this settlement negotiations until he left Riker Danzig in November 2016. A review of Mr. Hall's involvement in the resolution of the NJDEP's claims reveal that some of which occurred after Goodman commenced negotiations with LPH to purchase the Subject Property. Therefore, the Court rules the present matter and the matter in which Mr. Hall previously represented G-I are substantially related. Mr. Hall is therefore disqualified from representing Plaintiff in this matter.

The issue now becomes whether Mr. Hall's disqualification should be imputed to the Fox Rothschild.

RPC 1:10 provides, in relevant part, that:

> (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under RPC 1.9, unless:
>
> (1) The matter does not involve a proceeding in which the personally disqualified lawyer had primary responsibility;
>
> (2) The personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
>
> (3) Written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

In this case, it cannot be argued that Mr. Hall was not primarily responsible over cases involving Defendants. As previously mentioned, through the entry of the Confirmation Order in the Bankruptcy Case, Riker Danzig attorneys and paraprofessionals devoted a total of 49,938.5 hours to the representation of G-I. Mr. Hall's billable hours alone constituted 32.6% of the amount of billable hours billed by all of Riker Danzig's attorneys. Since the filing of this instant motion, Mr. Hall has been screened from any participation in the matter. However, it is undisputed that written notice of the conflict was not given to the former client to ascertain compliance with the provisions of Rule 1:10. As such Mr. Hall's disqualification shall be imputed to Fox Rothschild.

Conclusion

As a result of the foregoing, Defendants' motion is GRANTED. Attorney Mark Hall, Esq. and the law firm of Fox Rothschild is disqualified from representing Plaintiff in the underlying litigation, for the reasons set forth herein.