

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TOWN OF WESTPORT, and)
WESTPORT COMMUNITY SCHOOLS,)
Plaintiffs,)
)
v.)
)
MONSANTO COMPANY,)
SOLUTIA INC., and)
PHARMACIA CORPORATION,)
Defendants.)

C.A. No. 14-CV-12041

**MONSANTO COMPANY’S ANSWER TO THE COMPLAINT
AND JURY DEMAND**

Monsanto Company (“Monsanto”), by and through its attorneys, Campbell, Campbell, Edwards & Conroy Professional Corporation, hereby responds to the plaintiffs, Town of Westport and Westport Community Schools’ (collectively referred to as “Westport” for ease and convenience) averments in their Complaint.

1. Monsanto admits that the Town of Westport and Westport Community Schools operate schools and buildings in Westport, Massachusetts. All remaining averments in paragraph 1 of the Complaint are denied.

2. Monsanto admits that some, but not all, PCBs were man-made chemicals. Otherwise, Monsanto is presently without sufficient information to form a belief as to the truth of the averment that PCBs were incorporated into hundreds of unidentified industrial and building products manufactured and distributed by unidentified entities or persons and later allegedly used to construct unidentified commercial and school buildings across the United States over an indefinite time; all remaining averments in paragraph 2 of the Complaint are denied.

3. Denied.

4. Monsanto admits that federal legislation related to PCBs was put in force in 1979 and that federal regulatory agencies thereafter promulgated regulations related to PCBs.

Westport is charged with knowledge of such laws as of the dates of their enactment. The federal statutory and regulatory laws related to PCBs speak for themselves and no further response is required. Monsanto denies the remaining averments in paragraph 4.

5. Monsanto admits that Westport filed a complaint seeking monetary damages.

Westport's complaint speaks for itself and no further response is required. Monsanto denies any remaining averments of paragraph 5.

PARTIES

6. Monsanto is presently without sufficient information to form a belief as to the truth of the averment that Westport detected PCBs in one or more of its buildings. Otherwise, Monsanto admits that Westport was at all times relevant to this matter a public entity responsible for the design, construction, maintenance, and repairs of its buildings.

Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 6.

7. Monsanto admits that Westport was at all times relevant to this matter a public entity invested with financial decision-making authority related to the design, construction, maintenance, and repairs of its buildings. Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 7.

8. Admitted

9. Admitted that Monsanto is a Delaware corporation with its principal place of business in St. Louis County, Missouri.

10. Admitted that Solutia is a Delaware corporation with its principal place of business in St. Louis County, Missouri.
11. Admitted that Pharmacia LLC is a Delaware limited liability company and a Citizen of the State of New Jersey, that it is part of the family of companies under the umbrella of Pfizer Inc. and that it was once known as “Monsanto Company”. Monsanto denies any remaining averments of Paragraph 11.
12. Monsanto admits that the original Monsanto Company n/k/a Pharmacia once operated agricultural, chemical and pharmaceutical businesses, that the chemicals business was spun-off to Solutia in 1997, that since 2000 the present Monsanto Company has operated the agricultural business and that Pharmacia retained the pharmaceutical business. Monsanto admits that Pharmacia commenced manufacturing PCBs in the 1930s; that it ceased manufacturing PCBs for uses other than as dielectric fluids in the early 1970s; and that it ceased manufacturing PCBs for dielectric fluids in 1977. Otherwise Monsanto denies any remaining averments of paragraph 12.
13. Monsanto incorporates its response to Paragraph 12 above.
14. Monsanto admits that that Pharmacia’s commercial chemical business was transferred to Solutia in 1997 and that the rights and responsibilities of the parties to the transaction are detailed in various complex corporate transactional and legal documents publicly available to Westport, the terms of which speak for themselves; thus no further answer is required. Further, the legal position of the defendants concerning the proper characterization of these complex corporate documents has been previously provided to Westport’s counsel (*see e.g.*, Doc. 134 in the *Town of Lexington* matter, C.A. No. 12-CV-11645).

15. Monsanto admits that various indemnity agreements exist as spelled out in various complex corporate transactional and legal documents publicly available to Westport, the terms of which speak for themselves; thus no further answer is required. Further, the legal position of the defendants concerning the proper characterization of these complex corporate documents has been previously provided to Westport's counsel (*see e.g.*, Doc. 134 in the Town of Lexington matter, C.a. No. 12-CV-11645).
16. Monsanto admits that Solutia filed a bankruptcy petition in 2003 and ultimately emerged from bankruptcy in 2008. The rights and responsibilities of the parties to the transaction are detailed in various, complex corporate transactional and legal documents publicly available to Westport the terms of which speak for themselves; thus no further answer is required. Further, the legal position of the defendants concerning the proper characterization of these complex corporate documents has been previously provided to Westport's counsel (*see e.g.*, Doc. 134 in the Town of Lexington matter, C.a. No. 12-CV-11645).
17. Monsanto admits that Westport (improperly) conflates the three separate and distinct corporations that they chose to sue and call them the "Defendants."

JURISDICTION AND VENUE

18. Monsanto admits that the Court has jurisdiction in this matter and incorporates its responses to paragraphs 9, 10 and 11 above.
19. Monsanto admits that venue is proper.

FACTUAL ALLEGATIONS

20. Admitted.

21. Monsanto admits that Pharmacia manufactured PCBs in bulk and distributed PCB under its trademarked name “Aroclor.” Monsanto denies that Pharmacia was the only manufacturer of PCBs for commercial uses in the United States (or otherwise).
Monsanto is presently without sufficient information to form a belief as to the truth of the remaining averments of paragraph 21 of the Complaint.
22. Monsanto admits that PCBs were sold in bulk to sophisticated entities and that chemical companies and manufacturers of building products, who were aware of the chemical and physical properties of PCBs, were among them. Monsanto denies that it ever manufactured or sold PCBs and is presently without sufficient information to form a belief as to the truth of the remaining averments of paragraph 22 of the Complaint.
23. Monsanto admits that PCBs were sold in bulk to sophisticated manufacturers of transformers, capacitors, and lighting ballasts that were used as dielectric fluids for safety purposes. Monsanto is presently without sufficient information to form a belief as to the truth of the remaining averments of paragraph 23 of the Complaint.
24. Monsanto admits that PCBs were sold in bulk to sophisticated entities and that chemical companies and manufacturers of caulks, sealants and paint, who were aware of the chemical and physical properties of PCBs, were among them. Otherwise, Monsanto is presently without sufficient information to form a belief as to the truth of the remaining averments of paragraph 24 of the Complaint.
25. Monsanto is presently without sufficient information to form a belief as to the truth of the averments of paragraph 25 of the Complaint.
26. Monsanto admits that federal legislation related to PCBs was put in force in 1979 and that federal regulatory agencies thereafter promulgated regulations related to PCBs.

Westport is charged with knowledge of such laws as of the dates of their enactment. The federal statutory and regulatory laws related to PCBs speak for themselves and no further response is required. Monsanto denies the remaining averments of paragraph 26 of the Complaint.

27. Monsanto admits that PCBs were sold in bulk to sophisticated users and used as a component part in other fully formulated or assembled products manufactured by other companies. Otherwise, paragraph 27 of the Complaint does not contain any factual averments and no response is required. Monsanto denies any remaining averments of paragraph 27 of the Complaint.
28. Monsanto is presently without sufficient information to form a belief as to the truth of the overbroad, vague and conclusory averments of paragraph 28.
29. Monsanto is presently without sufficient information to form a belief as to the truth of the averments of paragraph 29 of the Complaint.
30. Monsanto is presently without sufficient information to form a belief as to the truth of the averments of paragraph 30 of the Complaint.
31. Paragraph 31 makes no sense as worded and, as such, Monsanto denies the averments therein.
32. Denied.
33. Denied.
34. Monsanto admits that EPA has promulgated regulations and/or published reports regarding PCBs, including discussions about possible carcinogenicity in humans; but denies that PCBs are carcinogenic or that EPA or any other regulatory agency or entity or

person has established with good and reliable science that PCBs are carcinogenic.

Monsanto denies the remaining averments of paragraph 34.

35. Monsanto admits that EPA has promulgated regulations and/or published reports regarding PCBs, including toxicity. Monsanto denies the remaining averments of paragraph 35.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Monsanto admits that ATSDR has published statements regarding PCBs and possible human health effects. Monsanto denies the remaining averments of paragraph 41.

42. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. Monsanto denies that “toxicity” of a chemical, including PCBs has any meaning without context as to the nature and extent of exposure and dose and states that to the extent the “1930s” era documents vaguely referenced exist, the contents will speak for themselves and no further answer is required. Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 42.

43. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1937 document speaks for itself and no further response is required as to it; other than to note that plaintiffs’ purported quote from the document is incomplete and out of context. Monsanto is

presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 43.

44. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1955 document speaks for itself and no further response is required as to it, other than to note that plaintiffs' purported quote from the document is incomplete and out of context. Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 44.

45. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1955 document speaks for itself and no further response is required as to it, other than to note that plaintiffs' purported quote from the document is incomplete and out of context. Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 45.

46. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1957 document speaks for itself and no further response is required as to it, other than to note that plaintiffs' purported quote from the document is incomplete and out of context. Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 46.

47. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1969 document speaks for itself and no further response is required as to it, other than to note that plaintiffs'

purported quote from the document is incomplete and out of context. Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 47.

48. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1969 document speaks for itself and no further response is required as to it, other than to note that plaintiffs' purported quote from the document is incomplete and out of context. Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 48.

49. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1970 document speaks for itself and no further response is required as to it, other than to note that plaintiffs' purported quote from the document is incomplete and out of context. Monsanto is presently without sufficient information to form a belief as to the truth of any remaining averments of paragraph 49.

50. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced document speaks for itself and no further response is required as to it, other than to note that plaintiffs' purported characterization of the document is inaccurate, subjective and self-serving and the limited sentences cherry-picked by plaintiff from the 23 page document are incomplete and out of context. Monsanto denies all remaining averments of paragraph 50.

51. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1969 document speaks for

itself and no further response is required as to it, other than to note that plaintiffs' purported characterization of the document is inaccurate, subjective and self-serving and the limited sentences cherry-picked by plaintiff from the multi-page document are incomplete and out of context. Monsanto denies all remaining averments of paragraph 51.

52. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1969 document speaks for itself and no further response is required as to it, other than to note that plaintiffs' purported characterization of the document is inaccurate, subjective and self-serving and the limited sentences cherry-picked by plaintiff from the multi-page document are incomplete and out of context. Monsanto denies all remaining averments of paragraph 52.

53. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. The referenced 1970 document speaks for itself and no further response is required as to it, other than to note that plaintiffs' purported quotes from the document are incomplete and out of context. Monsanto denies any remaining averments of paragraph 53.

54. Monsanto notes that the present Monsanto Company, formed in 2000, was never involved in the manufacture or sale of PCBs. Monsanto is presently without sufficient information to form a belief as to the truth of the averments of paragraph 54.

55. Monsanto denies plaintiff's attempted characterization of the Toxic Substances Control Act, but admits that federal legislation related to PCBs was put in force in 1979 and that federal regulatory agencies thereafter promulgated regulations related to PCBs.

Monsanto further responds that the federal statute and regulations related to PCBs speak for themselves and no further response is required as to them.

56. Monsanto denies the averments of paragraph 56, except to admit that the federal EPA issued a press release in September 2009 related to caulk containing PCBs. The press release speaks for itself.

57. Monsanto admits that the EPA issued a press release in December 2013 updating previously published information directed at fluorescent lighting with ballasts containing PCBs. The EPA press release speaks for itself and no further response is required.

58. Denied.

59. Denied.

60. In response to the first sentence of Paragraph 60, Monsanto repeats its response to paragraphs 1, 6, 7, and 8 above. Monsanto is presently without sufficient information to form a belief as to the truth of the averments of the second sentence of paragraph 60. Monsanto denies the averments of the last sentence of paragraph 60.

FIRST CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY DEFECTIVE DESIGN

61. Monsanto repeats and reiterates its responses to the foregoing 60 paragraphs. Monsanto also reiterates that it was first formed in 2000 and never manufactured or sold PCBs.

62. Monsanto repeats its responses to paragraphs 12, 21, 22, 23, 24, and 25 above, denies that the current Monsanto Company, that first came into existence in 2000, ever manufactured or sold PCBs, but admits that Pharmacia manufactured PCBs between 1935 until 1977, restricting sales commencing in the early 1970s to electrical equipment manufacturers only. Otherwise, Monsanto denies the remaining averments of paragraph 62.

63. Denied.

64. Monsanto denies that the current Monsanto Company that first came into existence in 2000, ever manufactured or sold PCBs. Monsanto repeats its responses to paragraphs 21, 22, 23, 24, and 15 above. Otherwise, Monsanto denies the remaining averments of paragraph 64.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

SECOND CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY FAILURE TO WARN

75. Monsanto repeats and reiterates its responses to the foregoing 74 paragraphs of the Complaint. Monsanto also reiterates that it was first formed in 2000 and never manufactured or sold PCBs.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

THIRD CAUSE OF ACTION

NEGLIGENCE

82. Monsanto repeats and reiterates its responses to the foregoing 81 paragraphs of the Complaint. Monsanto also reiterates that it was first formed in 2000 and never manufactured or sold PCBs.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Monsanto denies each and every allegation of the Complaint not specifically admitted above.

The Court dismissed paragraphs 87-109 in its Order dated March 24, 2015. As such, no response is required.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Westport fails to state claims upon which relief can be granted against any defendant, including against Monsanto Company, which first came into existence in 2000 and never manufactured or sold PCBs.

SECOND SEPARATE DEFENSE

Westport's claims for breach of warranty against all defendants fail because (1) Westport did not transact any business with Pharmacia (or any other defendant) up to and including the time in 1969 when construction of the Middle School was substantially completed and (2) the injury causing property damage at the Middle School occurred prior to substantial completion of the structure. Pharmacia, therefore, did not impliedly warrant such products. Nor, of course, did either the present Monsanto Company or Solutia impliedly warrant such products, since neither of them ever manufactured or sold PCBs.¹

THIRD SEPARATE DEFENSE

Pharmacia sold PCBs in bulk for use as a component by formulators and other assemblers of products sold to end users. As a component part maker, Pharmacia did not owe any duty to warn end users of the products put into the stream of commerce by formulators and assemblers. Further, neither the present Monsanto Company or Solutia could have owed any duties to warn, since neither of them ever manufactured or sold PCBs.

FOURTH SEPARATE DEFENSE

¹ Solutia first came into existence in 1997 and the present Monsanto Company first came into existence in 2000. Neither Solutia or the present Monsanto ever manufactured or sold PCBs. For the detailed reasons previously provided to Westport's counsel (*see, e.g.*, Doc. 134 in the *Town of Lexington* matter, C.A. No. 12-CV-11645), neither Monsanto nor Solutia are directly liable in tort to Westport for any alleged acts or omissions of Pharmacia in relation to its manufacture and sale of PCBs between 1935 and 1977, or otherwise. Since Westport is attempting to retain Solutia and Monsanto as defendants in this case, however, Solutia and Monsanto each adopt and incorporate herein by reference each and every affirmative defense asserted by Pharmacia, without prejudice to their pending motions for summary judgment.

Pharmacia sold PCBs in bulk for use as a component by sophisticated formulators and other assemblers of end products, many of whom were chemical companies or employed chemists and chemical engineers. Any duty to warn end users of formulated or fully assembled end products reposed in the sophisticated formulator or assembler – not Pharmacia. Further, neither the present Monsanto Company or Solutia could have owed any duties to warn, since neither of them ever manufactured or sold PCBs.

FIFTH SEPARATE DEFENSE

Westport's claim for breach of implied warranty for an alleged design defect fails because polychlorinated biphenyls as a chemical compound cannot be designed differently. Pharmacia sold PCBs in bulk for use as a component by formulators and other assemblers of products sold to end users. Pharmacia did not participate in the formulations, design, or assembly of the end products containing PCBs and bears no responsibility for their design. Further, neither the present Monsanto Company nor Solutia ever manufactured or sold PCBs and hence cannot be liable for breach of implied warranty.

SIXTH SEPARATE DEFENSE

Westport's claim for breach of implied warranty for failure to warn fails because the nature of the formulations and fully assembled products, including the quantities and synergies of chemicals, minerals, additives, and PCBs used, were unknown to Pharmacia. As Pharmacia did not participate in the formulations, design, or assembly of the end products containing PCBs, it bears no responsibility for warnings related to those products. Further, neither the present Monsanto Company nor Solutia ever manufactured or sold PCBs and hence cannot be liable for breach of implied warranty for failure to warn or otherwise.

SEVENTH SEPARATE DEFENSE

Westport's claims against Pharmacia and all other defendants fail because Westport's conduct, alone or in conjunction with others unconnected to Pharmacia, was the sole proximate cause of Westport's alleged property damage.

EIGHTH SEPARATE DEFENSE

Westport's negligence and breach of warranty claims fail because its alleged property damage was caused by the acts and omissions of third persons over whom neither Pharmacia or the other defendants had control or responsibility.

NINTH SEPARATE DEFENSE

Westport's negligence claim against Pharmacia, Monsanto Company and Solutia is barred in whole or in part as a result of its own negligent acts and omissions, including its failure properly to repair and maintain the Middle School.

TENTH SEPARATE DEFENSE

Westport's breach of warranty claims against Pharmacia, Solutia and Monsanto fail because it knowingly and unreasonably proceeded to use the end products about which it now complains in the face of state and federal statutes, regulations, and standard practices applicable to it and to its buildings.

ELEVENTH SEPARATE DEFENSE

The Town of Westport and Westport Community Schools' negligence and breach of warranty claims against Pharmacia and the other defendants are barred by the applicable statutes of limitations.

TWELFTH SEPARATE DEFENSE

Westport's claims are barred by the economic loss rule.

THIRTEENTH SEPARATE DEFENSE

Westport's claims are barred because its alleged property damage arose from detailed specifications on the building products installed into the Westport Middle School, including materials to be used in such products, promulgated by it and its architects.

FOURTEENTH SEPARATE DEFENSE

Westport failed to use reasonable care to mitigate their damages.

FIFTEENTH SEPARATE DEFENSE

The Town of Westport was explicitly instructed by the Commonwealth of Massachusetts Department of Public Health that there was no immediate threat to human health from airborne PCBs contained in building products and that it need not undergo testing of its public schools for airborne PCBs. Despite such advice, the Town of Westport knowingly and purposefully chose to undertake such testing and thereby willingly incurred its alleged monetary damages.

SIXTEENTH SEPARATE DEFENSE

Westport's common law claim for punitive damages fails because Massachusetts does permit recovery of punitive damages.

SEVENTEENTH SEPARATE DEFENSE

Westport's common law claim for an award of attorneys' fees and expenses fails because Massachusetts does not permit recovery of such fees and expenses.

JURY DEMAND

In the event it does not prevail on summary judgment or other dispositive motion, Monsanto Company demands a trial by jury on all claims and defenses raised in this litigation.

MONSANTO COMPANY,

By its attorneys,

**CAMPBELL CAMPBELL EDWARDS &
CONROY, P.C.**

/s/ Richard P. Campbell

Richard P. Campbell (BBO# 071600)
Richard L. Campbell (BBO # 663934)
Brandon L. Arber (BBO # 676425)
Diana A. Chang (BBO # 682317)
Sean M. Hickey (BBO # 690865)
One Constitution Center, 3rd Floor
Boston, MA 02129
(617) 241-3000
rpcampbell@campbell-trial-lawyers.com
rlcampbell@campbell-trial-lawyers.com
barber@campbell-trial-lawyers.com
dchang@campbell-trial-lawyers.com
shickey@campbell-trial-lawyers.com

-and-

HUSCH BLACKWELL LLP
Carol A. Rutter (pro hac vice)
Robyn D. Buck (pro hac vice)
The Plaza in Clayton
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
(314) 480-1500
Carol.Rutter@huschblackwell.com
Robyn.Buck@huschblackwell.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2015, the foregoing *Answer* was filed electronically. Notice of this filing will be sent by e-mail to the following parties by operation of the Court's electronic filing system:

Richard M. Sandman
RODMAN, RODMAN & SANDMAN, P.C.
442 Main Street, Suite 300
Malden, MA 02148-5122
Telephone: (781) 322-3720

Scott Summy (pro hac vice)
Carla Burke (pro hac vice)
BARON & BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219-4281
Telephone: (214) 521-3605

Robert J. Gordon (pro hac vice)
Robin L. Greenwald (pro hac vice)
WEITZ & LUXENBERG, P.C.
700 Broadway
New York, NY 10003
Telephone: (212) 558-5505

/s/ Richard P. Campbell