

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

TOWN OF WESTPORT and
WESTPORT COMMUNITY SCHOOLS,
Plaintiffs,

v.

MONSANTO COMPANY,
SOLUTIA INC., and
PHARMACIA CORPORATION,
Defendants

PLAINTIFFS’ ORIGINAL COMPLAINT

I. INTRODUCTION

1. Plaintiffs Town of Westport (“Town”) and Westport Community Schools (“Westport”) operate public schools and buildings in Westport, Massachusetts. Westport has detected toxic chemical compounds known as polychlorinated biphenyls (“PCBs”) in one or more of its buildings.
2. PCBs are man-made organic chemical compounds that were used in hundreds of industrial and commercial applications in the United States. Among other uses, PCBs were incorporated into building products including electrical equipment, fluorescent lighting ballasts, paints, sealants, and caulks that were used in the construction of commercial and school buildings.

3. PCBs cause a variety of adverse health effects. PCB exposure is associated with cancer as well as serious non-cancer health effects, including effects on the immune system, reproductive system, nervous system, endocrine system and other health effects.
4. PCBs easily escape into the atmosphere when they are produced and through the normal, intended uses of products that contain PCB compounds. As a result, PCBs are a near global environmental contaminant. To stem the contamination, to prevent health risks associated with exposure to PCBs, and for other reasons, Congress enacted the Toxic Substances Control Act (“TSCA”), which banned the manufacture and most uses of PCBs as of January 1, 1979.
5. The Plaintiffs seek damages for the costs of investigating, removing toxic PCB compounds, and remediating all PCB contamination from their school buildings and properties.

II. PARTIES

6. Westport is a school district that operates public schools in the Town of Westport. The district has detected PCBs in one or more of its school buildings. In Massachusetts, a school district is a body politic with the power to sue and be sued as provided by Mass. G.L. ch. 71, § 16. School districts are authorized to construct, maintain, renovate, remodel, and repair school buildings. *Id.*
7. The Town has a property interest in buildings used by the school district as schools. The Town also has the financial obligation for investigation and remediation activities conducted at school buildings. A town may sue and be sued as provided by Mass. G.L. ch. 40, § 2.
8. Plaintiffs are located in Westport, Massachusetts.

9. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation with its principal place of business in St. Louis, Missouri.
10. Defendant Solutia Inc. (“Solutia”) is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri.
11. Defendant Pharmacia LLC (formerly known as “Pharmacia Corporation” and successor to Old Monsanto) is a Delaware LLC with its principal place of business in Peapack, New Jersey. Pharmacia is now a wholly-owned subsidiary of Pfizer, Inc.
12. The original Monsanto Company (“Old Monsanto”) operated an agricultural products business, a pharmaceuticals and nutrition business, and a chemical products business. Old Monsanto began manufacturing PCBs in the 1930s and continued to manufacture commercial PCBs until the late 1970s.
13. Through a series of transactions beginning in approximately 1997, Old Monsanto’s businesses were spun off to form three separate corporations. The corporation now known as Monsanto operates Old Monsanto’s agricultural products business. Old Monsanto’s chemical products business is now operated by Solutia. Old Monsanto’s pharmaceuticals business is now operated by Pharmacia.
14. Solutia was organized by Old Monsanto to own and operate its chemical manufacturing business. Solutia assumed the operations, assets, and liabilities of Old Monsanto’s chemicals business.¹
15. Although Solutia assumed and agreed to indemnify Pharmacia (then known as Monsanto Company) for certain liabilities related to the chemicals business, Defendants have

¹ See MONSANTO COMPANY’S ANSWER TO THE COMPLAINT AND JURY DEMAND, *Town of Lexington v. Pharmacia Corp., Solutia, Inc., and Monsanto Company*, C.A. No. 12-CV-11645, D. Mass. (October 8, 2013); see also Relationships Among Monsanto Company, Pharmacia Corporation, Pfizer Inc., and Solutia Inc., <http://www.monsanto.com/whoweare/pages/monsanto-relationships-pfizer-solutia.aspx> (last accessed February 20, 2014).

entered into agreements to share or apportion liabilities, and/or to indemnify one or more entity, for claims arising from Old Monsanto's chemical business --- including the manufacture and sale of PCBs.²

16. In 2003, Solutia filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Solutia's reorganization was completed in 2008. In connection with Solutia's Plan of Reorganization, Solutia, Pharmacia and New Monsanto entered into several agreements under which Monsanto continues to manage and assume financial responsibility for certain tort litigation and environmental remediation related to the Chemicals Business.³
17. Monsanto, Solutia, and Pharmacia are collectively referred to in this Complaint as "Defendants."

III. JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to 28 U.S.C. §1332 because complete diversity exists between Plaintiffs and Defendants. Each Plaintiff is a citizen of Massachusetts, but no Defendant is a citizen of Massachusetts. Monsanto is a Delaware corporation with its principal place of business in St. Louis, Missouri. Solutia is a Delaware corporation with its principal place of business in St. Louis, Missouri. Pharmacia is a Delaware limited liability company with its principal place of business in Peapack, New Jersey.
19. Venue is appropriate in this judicial district pursuant to 28 U.S.C. section 1391(a) because a substantial part of the property that is the subject of the action is situated in this judicial district.

² *See id.*

³ *See* Monsanto's Form 8-K (March 24, 2008), and Form 10-Q (June 27, 2008), available at <http://www.monsanto.com/investors/pages/sec-filings.aspx> (last accessed February 20, 2014).

IV. FACTUAL ALLEGATIONS

A. Monsanto Manufactured PCBs for Use in the United States Until the 1979 Ban.

20. Polychlorinated biphenyl, or “PCB,” is a molecule comprised of chlorine atoms attached to a double carbon-hydrogen ring (a “biphenyl” ring). A “PCB congener” is any single, unique chemical compound in the PCB category. Over two hundred congeners have been identified.⁴
21. PCBs were generally manufactured as mixtures of congeners. These were both intentionally produced as commercial products, and incidentally produced as byproducts of other manufacturing processes. From approximately 1935 to 1979, Monsanto Company was the only manufacturer in the United States that intentionally produced PCBs for commercial use.⁵ The most common trade name for PCBs in the United States was “Aroclor,” which was trademarked by Old Monsanto.
22. Before 1979, Monsanto’s commercially-produced PCBs were used in a wide range of industrial applications in the United States. Products containing PCBs were widely used in the construction and renovation of buildings throughout the United States.
23. Some PCB-containing products were used in applications that enclosed the PCBs completely within the equipment such as transformers, motor start capacitors, and lighting ballasts. These are generally known as “totally enclosed” uses.
24. Other PCB-containing products were used in applications in which the PCBs were not enclosed --- *e.g.*, caulks, paints, and sealants. These are known as “non-totally enclosed”

⁴ Table of PCB Congeners, available at <http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/congeners.htm> (last accessed February 20, 2014).

⁵ See 116 Cong. Record 11695, 91st Congress, (April 14, 1970) (“Insofar as the Monsanto Co., the sole manufacturer of PCB’s is concerned”); 121 Cong. Record 33879, 94th Congress, (October 23, 1975) (“The sole U.S. producer, Monsanto Co. . . .”). See also MONS 058730-058752 at 058733 (identifying other producers as “all ex-USA.”), attached as Exhibit A.

uses because no physical barrier prevents PCBs from direct contact with the surrounding environment.

25. Between approximately 1950 and 1979, PCBs were widely and foreseeably used in the construction and renovation of commercial buildings and schools. Accordingly, PCBs are likely to be present in any number of materials present in a school built or renovated during this period, including paint, caulk, fluorescent light ballasts, and other materials.
26. In response to widespread environmental contamination, Congress enacted the Toxic Substances Control Act (“TSCA”), which banned the manufacture and most uses of PCBs as of January 1, 1979.
27. As used in this Complaint, the terms “PCB,” “PCBs,” “PCB-containing products,” and “PCB products” refer to products containing polychlorinated biphenyl congener(s) manufactured for placement into trade or commerce, including any product that forms a component part of or that is subsequently incorporated into another product.

B. PCB-Containing Materials Cause Contamination and Property Damage.

28. PCBs easily migrate from non-totally enclosed building materials (such as caulk) into surrounding materials such as masonry, wood, drywall, and soil, thereby causing damage to those surrounding materials. PCBs can also escape from totally-enclosed materials (such as light ballasts) and similarly contaminate and damage surrounding materials.
29. The Environmental Protection Agency (“EPA”) conducted research of PCBs in school buildings and confirmed that emissions from caulk and fluorescent light ballasts cause elevated PCBs in the surrounding air.

30. EPA concluded that some building materials (*e.g.*, paint and masonry walls) and indoor dust can absorb PCB emissions and become potential secondary sources of contamination that begin emitting PCBs on their own.

C. PCB Exposure and Toxicity

31. PCBs can enter the human both through ingestion, inhalation, and dermal contact.
32. Children, teachers, and employees who work in school buildings may inhale PCBs that are emitted into the air from caulk, paint, light ballasts, and other secondary sources. They may also ingest PCBs that are emitted into air and settle onto surfaces that come into contact with food or drinks. And they may absorb PCBs from physical contact with PCB-containing materials, secondary sources, or surfaces that have become contaminated by air or dust.
33. Any exposure is a concern to a reasonable school district because PCBs are associated with serious health risks.
34. EPA has determined that Monsanto's PCBs are probable human carcinogens. In 1996, EPA reassessed PCB carcinogenicity, based on data related to Aroclors 1016, 1242, 1254, and 1260.⁶ EPA's cancer reassessment was peer reviewed by 15 experts on PCBs, including scientists from government, academia and industry, all of whom agreed that PCBs are probable human carcinogens.
35. In addition, EPA concluded that PCBs are associated with serious non-cancer health effects. From extensive studies of animals and primates using environmentally relevant doses, EPA has found evidence that PCBs exert significant toxic effects, including effects

⁶ EPA, PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures, EPA/600/P-96/001F (September 1996), available at <http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/pcb.pdf> (last accessed May 5, 2014).

on the immune system, the reproductive system, the nervous system, and the endocrine system.

36. PCBs affect the immune system by causing a significant decrease in the size of the thymus gland, lowered immune response, and decreased resistance to viruses and other infections. The animal studies were not able to identify a level of PCB exposure that did not affect the immune system. Human studies confirmed immune system suppression.
37. Studies of reproductive effects in human populations exposed to PCBs show decreased birth weight and a significant decrease in gestational age with increasing exposures to PCBs. Animal studies have shown that PCB exposures reduce birth weight, conception rates, live birth rates, and reduced sperm counts.
38. Human and animal studies confirm that PCB exposure causes persistent and significant deficits in neurological development, affecting visual recognition, short-term memory, and learning. Some of these studies were conducted using the types of PCBs most commonly found in human breast milk.
39. PCBs may also disrupt the normal function of the endocrine system. PCBs have been shown to affect thyroid hormone levels in both animals and humans. In animals, decreased thyroid hormone levels have resulted in developmental deficits, including deficits in hearing. PCB exposures have also been associated with changes in thyroid hormone levels in infants in studies conducted in the Netherlands and Japan.
40. PCBs have been associated with other health effects including elevated blood pressure, serum triglyceride, and serum cholesterol in humans; dermal and ocular effects in monkeys and humans; and liver toxicity in rodents.

41. Children may be affected to a greater extent than adults. The Agency for Toxic Substances and Disease Registry explained: “Younger children may be particularly vulnerable to PCBs because, compared to adults, they are growing more rapidly and generally have lower and distinct profiles of biotransformation enzymes, as well as much smaller fat deposits for sequestering the lipophilic PCBs.”⁷

D. Monsanto’s Knowledge of PCB Toxicity

42. Monsanto’s internal documents show that Monsanto knew that PCBs were toxic as early as the 1930s.
43. An October 11, 1937, memorandum advises that “Experimental work in animals shows that prolonged exposure to Aroclor vapors evolved at high temperatures or by repeated oral ingestion will lead to systemic toxic effects. Repeated bodily contact with the liquid Aroclors may lead to an acne-form skin eruption.”⁸
44. A September 20, 1955, memo from Emmet Kelly set out Monsanto’s position with respect to PCB toxicity: “We know Aroclors are toxic but the actual limit has not been precisely defined. It does not make too much difference, it seems to me, because our main worry is what will happen if an individual develops [*sic*] any type of liver disease and gives a history of Aroclor exposure. I am sure the juries would not pay a great deal of attention to [maximum allowable concentrates].”⁹
45. On November 14, 1955, Monsanto’s Medical Department provided an opinion that workers should not be allowed to eat lunch in the Aroclor department:

It has long been the opinion of the Medical Department that eating in process departments is a potentially hazardous procedure that

⁷ Agency for Toxic Substances and Disease Registry, Toxicological Profile for Polychlorinated Biphenyls (PCBs), (November 2000), at 405, available at www.atsdr.cdc.gov (last accessed May 1, 2014).

⁸ MONS 061332, attached as Exhibit B.

⁹ MONS 095196-7, attached as Exhibit C.

could lead to serious difficulties. While the Aroclors are not particularly hazardous from our own experience, this is a difficult problem to define because early literature work claimed that chlorinated biphenyls were quite toxic materials by ingestion or inhalation.¹⁰

46. On January 21, 1957, Emmet Kelly reported that after conducting its own tests, the U.S. Navy decided against using Monsanto's Aroclors: "No matter how we discussed the situation, it was impossible to change their thinking that Pydraul 150 is just too toxic for use in a submarine."¹¹
47. On March 6, 1969, Monsanto employee W. M. Richard wrote a memorandum discussing a recent article that criticized PCBs as a "toxic substance" and "uncontrollable pollutant."¹² Richard explained that Monsanto could take steps to reduce PCB releases from its own plants but cautioned, "It will be still more difficult to control other end uses such as cutting oils, adhesives, plastics, and NCR paper. In this applications exposure to consumers is greater and the disposal problem becomes complex."
48. On September 9, 1969, Monsanto employee W.R. Richard wrote an interoffice memo titled "Defense of Aroclor."¹³ He advised that the company could not defend itself against all criticism: "We can't defend vs. everything. Some animals or fish or insects will be harmed. Aroclor degradation rate will be slow. Tough to defend against. Higher chlorination compounds will be worse [than] lower chlorine compounds. Therefore we will have to restrict uses and clean-up as much as we can, starting immediately."¹⁴

¹⁰ Monsanto Chemical Company, Memorandum to H.B. Patrick, November 14, 1955 (no Bates number), attached as Exhibit D.

¹¹ MONS 095640, attached as Exhibit E.

¹² MONS 096509-096511, attached as Exhibit F.

¹³ DSW 014256-014263, attached as Exhibit G.

¹⁴ *Id.*

49. On January 29, 1970, Elmer Wheeler of the Medical Department circulated laboratory reports discussing results of animal studies. He noted: “Our interpretation is that the PCB’s are exhibiting a greater degree of toxicity in this chronic study than we had anticipated. Secondly, although there are variations depending on species of animals, the PCB’s are about the same as DDT in mammals.”¹⁵
50. Monsanto expressed a desire to keep profiting from PCBs despite the environmental havoc in a PCB Presentation to Corporate Development Committee. The report suggests possible reactions to the contamination issue. It considered that doing nothing was “unacceptable from a legal, moral, and customer public relations and company policy viewpoint.” But the option of going out of the Aroclor business was also considered unacceptable: “there is too much customer/market need and selfishly too much Monsanto profit to go out.”¹⁶
51. The Aroclor Ad Hoc Committee held its first meeting on September 5, 1969. The committee’s objectives were to continue sales and profits of Aroclors in light of the fact that PCB “may be a global contaminant.”¹⁷ The meeting minutes acknowledge that PCB-containing products rapidly contaminate the environment: “In one application alone (highway paints), one million lbs/year are used. Through abrasion and leaching we can assume that nearly all of this Aroclor winds up in the environment.”¹⁸
52. A month later, on October 2, 1969, the Committee reported that it could not protect the environment from Aroclors as “global” contaminants but could protect the manufacture and sale of Aroclors:

¹⁵ MONS 098480, attached as Exhibit H.

¹⁶ MONS 058730-058753, at 058737, attached as Exhibit I.

¹⁷ MONS 030483-030486, attached as Exhibit J.

¹⁸ *Id.* at 030485.

There is little probability that any action that can be taken will prevent the growing incrimination of specific polychlorinated biphenyls (the higher chlorinated – e.g. Aroclors 1254 and 1260) as nearly global environmental contaminants leading to contamination of human food (particularly fish), the killing of some marine species (shrimp), and the possible extinction of several species of fish eating birds.

Secondly, the committee believes that there is no practical course of action that can so effectively police the uses of these products as to prevent environmental contamination. There are, however a number of actions which must be undertaken to prolong the manufacture, sale and use of these particular Aroclors as well as to protect the continued use of other members of the Aroclor series.¹⁹

53. An interoffice memorandum circulated on February 16, 1970, provided talking points for discussions with customers in response to Monsanto's decision to eliminate Aroclors 1254 and 1260: "We (your customer and Monsanto) are not interested in using a product which may present a problem to our environment." Nevertheless, the memo acknowledges that Monsanto "can't afford to lose one dollar of business." To that end, it says, "We want to avoid any situation where a customer wants to return fluid. . . . We would prefer that the customer use up his current inventory and purchase [new products] when available. He will then top off with the new fluid and eventually all Aroclor 1254 and Aroclor 1260 will be out of his system. We don't want to take fluid back."²⁰
54. In 1970, the year after Monsanto formed the "ad hoc" committee, PCB production in the United States peaked at 85 million pounds.

E. Legal and Regulatory Standards Applicable to PCBs

55. Congress enacted the Toxic Substances Control Act ("TSCA"), which banned the manufacture and most uses of PCBs as of January 1, 1979.

¹⁹ DSW 014612-014624, at 014615, attached as Exhibit K.

²⁰ MONS 100123-100124, attached as Exhibit L.

56. More than thirty years passed before EPA announced that schools may have been built with PCB-containing materials. In a press release issued on September 25, 2009, EPA advised that although PCBs were banned by 1979, they remained in place in buildings that were constructed before the ban.²¹
57. On December 12, 2013, EPA issued a press release advising that PCB-containing fluorescent light ballasts that were installed prior to the ban may still be in use in schools and may leak PCBs.²²
58. EPA has not issued any information regarding possible PCB contamination in schools in Massachusetts.
59. The Massachusetts Department of Environmental Protection has not issued any information regarding possible PCB contamination in schools in Massachusetts.

F. Plaintiffs' Schools are Contaminated with PCBs.

60. Plaintiff Westport operates a public school system in the Town of Westport, Massachusetts. Westport has detected PCBs in one or more of its schools that were built or renovated between 1950 and 1978. In May 2011, dangerous levels of PCBs were detected at Westport Middle School, necessitating removal and remediation.

FIRST CAUSE OF ACTION

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
DEFECTIVE DESIGN**

61. Plaintiffs reallege and reaffirm each and every allegation set forth in all preceding

²¹ Press Release, *EPA Announces Guidance to Communities on PCBs in Caulk of Buildings Constructed or Renovated Between 1950 and 1978* (September 25, 2009), available at <http://yosemite.epa.gov/opa/admpress.nsf/e51aa292bac25b0b85257359003d925f/28c8384eea0e67ed8525763c0059342f!OpenDocument&Highlight=0,PCB> (last accessed February 24, 2014).

²² Press Release, *EPA Provides Updated Guidance to Schools on PCB-containing Lighting Fixtures* (December 12, 2013), available at <http://yosemite.epa.gov/opa/admpress.nsf/e51aa292bac25b0b85257359003d925f/2e548f3ed779c8a085257c3f006147ad!OpenDocument&Highlight=0,PCB#area> (last accessed February 24, 2014).

paragraphs as if fully restated in this cause of action.

62. Monsanto was a manufacturer of PCBs and PCB products produced for commercial use. Monsanto was in the business of producing, making, fabricating, constructing, designing, remanufacturing, reconditioning or refurbishing PCBs and PCB-containing products for placement into trade or commerce.
63. Monsanto's PCB products, including fluorescent light ballasts, caulks, and paints, were manufactured for placement into trade or commerce.
64. Monsanto's PCB products may have formed component parts of or may have been subsequently incorporated into other products, equipment, or improvements to real property.
65. As a manufacturer, Monsanto owed a duty to all persons to whom PCBs and PCB-containing products might foreseeably harm, including Plaintiffs, not to market any product which is unreasonably dangerous in design for its reasonably anticipated use.
66. By manufacturing and selling PCBs, Monsanto warranted that PCBs are merchantable, safe, and fit for ordinary purposes.
67. Monsanto breached that warranty as PCBs and PCB-containing products are unreasonably dangerous for their reasonably anticipated use in school buildings for the following reasons:
 - a. PCB-containing products were used to construct commercial buildings and schools throughout Massachusetts, including Plaintiffs';
 - b. PCB readily migrates from the site of its original application and contaminates adjacent materials, dust, air, interior surfaces, exterior surfaces, and soil;
 - c. PCB persists in the environment;

- d. PCB is invisible to the naked eye;
 - e. Children and teachers may be exposed to PCB through inhalation, ingestion, and dermal contact.
 - f. PCB is a known animal carcinogen and a possible human carcinogen and is associated with other serious health risks;
 - g. PCB exposure may be prevented only physical removal of the original PCB products and any secondary materials that have become contaminated;
 - h. Such remediation is extremely expensive to undertake, disrupts normal classroom activities, and may cause undue concern on the part of students, teachers, school employees, and parents.
68. Monsanto knew of the risks associated with PCBs and failed to use reasonable care in the design of its products.
69. Products containing PCBs pose greater dangers to school buildings than would be expected by ordinary persons such as Plaintiffs, schoolchildren, teachers, and employees, and the general public.
70. There existed an alternative design for Monsanto's products that was capable of preventing the Plaintiffs' damage.
71. The risks posed by PCBs and PCB products outweigh the products' utility as building materials.
72. The likelihood that PCBs would contaminate Plaintiffs' property and the gravity of that damage outweighed any burden on Monsanto to adopt an alternative design and outweighed the adverse effect, if any, of such alternative design on the utility of the product.

73. As a direct and proximate result of Monsanto's unreasonably dangerous design, manufacture, and sale of PCB-containing products, Plaintiffs have suffered, and continue to suffer, property damage requiring investigation, remediation, and monitoring costs to be determined at trial.
74. Monsanto knew that it was substantially certain that its acts and omissions described above would threaten public health and cause extensive contamination of commercial and school properties. Monsanto committed each of the above described acts and omissions knowingly, willfully, and/or with fraud, oppression, or malice, and with conscious and/or reckless disregard for the health and safety of others, and for Plaintiffs' property rights.

SECOND CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY FAILURE TO WARN

75. Plaintiffs reallege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated in this count.
76. As a manufacturer of PCBs and PCB-containing products, Monsanto had a duty to provide adequate warnings to Plaintiffs, the public, and public officials of the risks posed by PCBs and PCB-containing products.
77. PCBs and PCB-containing products are unreasonably dangerous for their reasonably anticipated use in school buildings for the following reasons:
- a. PCB-containing products were used to construct commercial buildings and schools throughout Massachusetts, including Plaintiffs';
 - b. PCB readily migrates from the site of its original application and contaminates adjacent materials, dust, air, interior surfaces, exterior surfaces, and soil;
 - c. PCB persists in the environment;

- d. PCB is invisible to the naked eye;
 - e. Children and teachers may be exposed to PCB through inhalation, ingestion, and dermal contact;
 - f. PCB is a known animal carcinogen and a possible human carcinogen and is associated with other serious health risks;
 - g. PCB exposure may be prevented only by physical removal of the original PCB products and any secondary materials that have become contaminated;
 - h. Such remediation is extremely expensive to undertake, disrupts normal classroom activities, and may cause undue concern on the part of students, teachers, school employees, and parents.
78. Monsanto knew of the risks associated with PCBs and failed to provide a warning that would lead an ordinary reasonable user or handler of a product to contemplate the dangers associated with PCB-containing products or an instruction that would have allowed Plaintiffs to avoid the damage to their property.
79. Despite Monsanto's knowledge of the presence of PCB-containing products in commercial buildings and schools nationwide, Monsanto has not issued any warning, instruction, recall, or advice regarding PCB-containing products to schools, communities, parents, or governmental agencies.
80. Plaintiffs would have heeded legally adequate warnings and would not have purchased products containing PCBs or would have taken steps to ensure that PCBs were treated differently to prevent potential exposure and contamination of the environment.

81. As a direct and proximate result of Monsanto's failure to warn, Plaintiffs have suffered, and continue to suffer, property damage requiring investigation, remediation, and monitoring costs to be determined at trial.

THIRD CAUSE OF ACTION

NEGLIGENCE

82. Plaintiffs reallege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated in this count.
83. As a manufacturer and seller of PCBs, Monsanto owed a duty to Plaintiffs and to all persons whom its products might foreseeably harm to exercise due care in the formulation, manufacture, sale, labeling, warning, and use of PCBs and products containing PCBs.
84. Monsanto knew or should have known that:
- a. PCB-containing products were used to construct commercial buildings and schools throughout Massachusetts, including Plaintiffs';
 - b. PCB readily migrates from the site of its original application and contaminates adjacent materials, dust, air, interior surfaces, exterior surfaces, and soil;
 - c. PCB persists in the environment;
 - d. PCB is invisible to the naked eye;
 - e. Children and teachers may be exposed to PCB through inhalation, ingestion, and dermal contact;
 - f. PCB is a known animal carcinogen and a possible human carcinogen and is associated with other serious health risks;

- g. PCB exposure may be prevented only physical removal of the original PCB products and any secondary materials that have become contaminated;
- h. Such remediation is extremely expensive to undertake, disrupts normal classroom activities, and may cause undue concern on the part of students, teachers, school employees, and parents.

85. Monsanto breached its duty of care to Plaintiffs by:

- a. Formulating, designing, manufacturing and selling PCBs for use in school buildings;
- b. Manufacturing, selling, promoting, and defending the continued manufacture and sale of PCBs without disclosing the risks associated with exposure to PCBs;
- c. Failing to restrict sales of PCB products to avoid risks of exposure at schools;
- d. Failing to advise school districts about the presence of PCBs in products including caulk and light ballasts;
- e. Failing to inspect and/or test for the presence of PCBs in products in school buildings, including but not limited to caulk and light ballasts;
- f. Failing to warn the public, regulators, and school districts about the continued presence of PCBs in construction materials used during the relevant time period; and
- g. Failing to make any attempt to remove PCB-laden materials from schools.

86. As a direct and proximate result of Monsanto's negligence, Plaintiffs have suffered, and continue to suffer, property damage requiring investigation, remediation, and monitoring costs to be determined at trial.

FOURTH CAUSE OF ACTION

PUBLIC NUISANCE

87. Plaintiffs reallege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated in this count.
88. Monsanto manufactured, distributed, marketed, and promoted PCBs in a manner that created or participated in creating a public nuisance that unreasonably endangers or injures the property, health, safety, and comfort of the general public and Plaintiffs, causing inconvenience and annoyance.
89. Monsanto's intentional, negligent, and reckless acts and omissions have created widespread contamination of property with PCBs.
90. By their conduct, Monsanto violated and continues to violate public rights and rights of the community at large to a clean and unpolluted natural environment and school buildings.
91. The presence of PCBs interferes with Plaintiffs' use and/or enjoyment of their property in a way that an ordinary, reasonable person would find is a substantial inconvenience and annoyance.
92. Monsanto knew or, in the exercise of reasonable care, should have known that the manufacture and sale of PCBs would seriously and unreasonably interfere with the ordinary comfort, use, and enjoyment of any property where PCBs were used.
93. As a direct and proximate result of Monsanto's creation of a public nuisance, Plaintiffs have suffered, and continue to suffer, property damage requiring investigation, remediation, and monitoring costs to be determined at trial.

FIFTH CAUSE OF ACTION

PRIVATE NUISANCE

94. Plaintiffs reallege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated in this count.
95. Plaintiffs' school buildings and grounds have been contaminated with PCBs.
96. The presence of PCBs unreasonably interferes with Plaintiffs' use, benefit, and enjoyment of their property.
97. Monsanto knew or, in the exercise of reasonable care, should have known that the manufacture and sale of PCBs would seriously and unreasonably interfere with the ordinary comfort, use, and enjoyment of any property where PCBs were used.
98. Monsanto's intentional, negligent, and reckless acts and omissions have contaminated Plaintiffs' property with PCBs.
99. As a direct and proximate result of Monsanto's creation of a private nuisance, Plaintiffs have suffered, and continue to suffer, property damage requiring investigation, remediation, and monitoring costs to be determined at trial.

SIXTH CAUSE OF ACTION

TRESPASS

100. Plaintiffs reallege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated in this count.
101. Plaintiffs are the owners, operators, and/or actual possessors of real property and improvements used for schools in the District.
102. Monsanto manufactured, distributed, marketed, and promoted PCBs with the actual knowledge and/or substantial certainty that PCB-containing products would, through

normal use, release PCBs that would migrate onto adjacent surfaces, causing property contamination.

103. Monsanto negligently, recklessly, and /or intentionally produced and marketed PCBs in a manner that caused PCBs to contaminate Plaintiffs' property.
104. As a direct and proximate result of Monsanto's trespass, Plaintiffs have suffered and continue to suffer property damage requiring investigation, remediation, and monitoring costs to be determined at trial.

SEVENTH CAUSE OF ACTION

Violation of the Massachusetts Oil and Hazardous

Material Release Prevention and Response Act

105. Plaintiffs reallege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated in this count.
106. By committing the acts alleged in this complaint, Monsanto has acted in the capacity of a person who (a) by contract, agreement, or otherwise, directly or indirectly, arranged for the transport, disposal, storage or treatment of hazardous material to or in a site or vessel from or at which there is or has been a release or threat of release of hazardous material; (b) directly, or indirectly, transported any hazardous material to transport, disposal, storage or treatment vessels or sites from or at which there is or has been a release or threat of release of such material; and/or (c) otherwise caused or is legally responsible for a release or threat of release of oil or hazardous material from a vessel or site, as defined by M.G.L.A. 21E § 5(a)(3)-(5).
107. Monsanto has directly and proximately caused and continues to cause significant damage to Plaintiffs and Plaintiffs' property.

108. Monsanto is strictly liable to Plaintiffs for damage to real property caused by the release or threatened release of PCBs pursuant to M.G.L.A. 21E § 5(a).
109. As a direct and proximate result of Monsanto's acts, Plaintiffs have suffered and continue to suffer property damage requiring investigation, remediation, and monitoring costs to be determined at trial.

PRAYER FOR RELIEF

Plaintiffs pray for judgment against Defendants, jointly and severally, as follows:

1. Compensatory damages according to proof including, but not limited to:
 - (a) the costs of investigating, sampling, testing, and assessing the extent of PCB contamination on Plaintiffs' properties;
 - (b) the costs of removing PCBs and PCB-containing materials from Plaintiffs' properties;
 - (c) the costs of informing parents and community members about the efforts to remove PCBs from schools.
2. Punitive damages;
3. Litigation costs and attorney's fees as provided by M.G.L.A. 21E § 15.
4. Pre-judgment and post-judgment interest;
5. Any other and further relief as the Court deems just, proper, and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs demand a jury trial.

Dated: May 7, 2014

/s/ Richard M. Sandman

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

/s/ Scott Summy

Scott Summy (subject to Admission Pro Hac Vice)
BARON & BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219-4281
Telephone: (214) 521-3605

/s/ Robert J. Gordon

Robert J. Gordon (subject to Admission Pro Hac
Vice)
WEITZ & LUXENBERG, P.C.
700 Broadway
New York, NY 10003
Telephone: (212) 558-5505

Attorneys for Plaintiffs

EXHIBIT A

(MONS 058730-058752)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

PCB PRESENTATION
TO
CORPORATE DEVELOPMENT COMMITTEE

I. INTRODUCTION:

We are here today to acquaint you with the PCB (Aroclor) pollution problem and to secure your guidance and approval on a recommended plan of action.

The problem is that Certain PCB's have recently been identified by various scientists along with DDT in fish, birds, and other wildlife.

From the standpoint of reproduction, the PCB's are highly toxic to birds. In a few moments, Elmer Wheeler will describe the problem in detail.

Our objective is to describe for you the basic problems, the issues involved, review alternative courses of action, and suggest an action plan program for your approval.

This is a serious matter, not only from the pollution viewpoint, but also because of the \$22 B worldwide customer business involved with resultant gross profits of \$10 B and a net investment of approximately \$9 B. In addition, there could be possible adverse legal and public relations problems leveled against Monsanto.

Our Agenda will be as follows:

MONS 058730



CV96-J-0440-E
DATE 04/02/01

PLIFF EXHIBIT NO. 105

-2-

PCB AGENDA REVIEW

- I. INTRODUCTION
- II. THE PROBLEM
 - DEVELOPMENTS INCRIMINATING PCB'S
 - COMPLEXITY OF IDENTIFICATION
 - NATURE OF
 - SERIOUSNESS
- III. LAW DEPARTMENT VIEWPOINT AND RECOMMENDATIONS
- IV. EFFECT ON MONSANTO AND ALTERNATIVES
- V. FUNCTIONAL FLUID BUSINESS GROUP DISCUSSION
 - MARKETS, USES
 - SOURCES OF POLLUTION
 - CUSTOMER EFFECT
- VI. PLASTICIZER BUSINESS GROUP DISCUSSION
 - MARKETS, USES
 - SOURCES OF POLLUTION
- VII. RECOMMENDED ACTION PLAN
- ~~VIII.~~ SUMMARY

MONS 058731

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-3-

By way of introduction, the Organic Division and the Medical Department has been actively engaged for the last 18 months in developing facts and knowledge on this subject by personal visits to Universities and Industrial test laboratories, other worldwide producers, and other industrial collaborators, as well as keeping abreast of all literature and news sources on the subject as well as funding a toxicological and analytical test program in excess of \$200 M. We established an Ad Hoc Committee of both Business Groups and Medical which recently issued a report - much of which will be discussed today. We have learned a lot, but there is much yet to learn as you will hear.

What are PCB's? They are polychlorinated biphenyls - better known to us as Aroclors. The next slide will quickly re-familiarize you with our Aroclor business.

MONS 058732

-4-

MONSANTO WORLDWIDE AROCLOR BUSINESS

POUNDS/YEAR	104 M (70 M in Functional Fluids 34 M in Plasticizers)
SALES/YEAR	\$22 M (\$16 M in Functional Fluids \$ 6 M in Plasticizers)
GROSS PROFIT/YEAR	\$10.0 M (\$7.5 M in Functional Fluids \$2.5 M in Plasticizers)
GROSS INVESTMENT	\$13 M (\$8.8 M net investment)
ROI	10.5%
WORLDWIDE M/I	62%
MONSANTO PRODUCTION LOCATIONS:	USA (2 plants, Anniston, Alabama Sauget, Illinois)
	UK (Newport)
	JAPAN (Yokkaichi)
OTHER PRODUCERS:	Bayer, Prodelec, Caffaro, Flick, Kanegahuchi, and several Eastern European producers (all ex-USA)
	✓ by UK

MONS 058733

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-5-

THE AROCLOR PRODUCT LINE

<u>CHEMICAL NAME</u>	<u>TRADE NAME</u>	<u>NATURE OF MATERIAL</u>	
MONOCHLOROBIPHENYL	AROCLOR 1221	THIN LIQUID	
DICHLOROBIPHENYL	AROCLOR 1232	↓	
TRICHLOROBIPHENYL	AROCLOR 1242		OILY LIQUID
TETRACHLOROBIPHENYL	AROCLOR 1248		
PENTACHLOROBIPHENYL	AROCLOR 1254		HEAVY MOLASSES
HEXACHLOROBIPHENYL	AROCLOR 1260		THICK TAR
HEPTACHLOROBIPHENYL	AROCLOR 1262		
OCTACHLOROBIPHENYL	AROCLOR 1268	↓	
DECACHLOROBIPHENYL	AROCLOR 1270	SOLID	
TERPHENYLS	SANTOWAX	↓	
CHLORINATED TERPHENYL	AROCLOR 5460	SOLID	

MONS 058734

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There are theoretically 210 different isomers of chlorinated biphenyls.

Monsanto entered the Aroclor market in 1930 by acquiring Swan Chemical Company. The first load of Aroclor went out of Anniston, Alabama to General Electric in 1931. Since then, the market has grown to one of Monsanto's most profitable franchises. This franchise is now being threatened ^{not by competition of} by recently found pollution problems which Elmer Wheeler will now discuss.

II. The Problem (Wheeler) - see attached Appendix A

III. Law Department Viewpoint and Recommendations (French)

IV. Effect on Monsanto and Our Alternative Courses of Action

As discussed, Aroclors 1254 and 1260 -- the 5 and 6 Cl ringed biphenyls are the ones most seriously involved in the pollution problem. Both Plasticizers and Fluids Groups are involved as shown:

MONS 058735

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AROCLOR SALES
(H POUNDS)

	<u>FLUIDS</u>	<u>PLASTICIZERS</u>	<u>TOTAL</u>
AROCLOR 1254	1.45	5.4	6.85
AROCLOR 1260 & ABOVE	<u>3.7</u>	<u>1.7</u>	<u>5.4</u>
	5.15	7.1	12.25

MONS 058736

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-8-

We considered 4 alternative courses of action:

(Slide)

Alternative 1: Do nothing was considered unacceptable from a legal, moral, ~~and~~ customer, public relations & company policy viewpoint. This is also the quickest route to being forced out of business.

Alternative 2: Go out of total Aroclor business was considered unacceptable from a Divisional viewpoint, but from a Corporate viewpoint may be necessary. ~~Only you can make that decision.~~ All Aroclor products are not serious pollutants - many degrade; there is too much customer/market need and selfishly too much Monsanto profit to go out. To go out would require a write off of Aroclor net investment of \$7 M (10¢/share) or if biphenyl included \$8.8 M (12¢/share). In addition, inventory disposition, continuing cost of utilities, and back-up capital and serious manpower & resources reallocation at Anniston.

Alternative 3: Go out of Aroclor 1254 and 1260. This was seriously considered and may eventually occur by our actions and customer actions, nevertheless, we feel that segments of this business are defensible or are so "confined" in use that specific plans of action are called for this portion. Our reasons for eliminating this alternative will become clearer as we outline our action plans.

MOHS 058737

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ALTERNATIVE COURSES OF ACTION

1. DO NOTHING - JUST REACT TO LEGISLATION AND EMOTION.
2. GO OUT OF TOTAL AROCLOR BUSINESS.
3. GO OUT OF AROCLOR 1254 AND 1260 PRODUCTION
4. DEVELOP SPECIFIC ACTION PLANS "TAILORED" TO EACH BUSINESS GROUP AND EACH CUSTOMER/MARKET SITUATION TO "CLEAN UP" THE MESS.

MONS 058738

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-10-

Alternative 4: Develop specific action plans tailored to each Business Group and each customer/market situation, - was the alternative selected at this point of time and based on our knowledge from a Divisional viewpoint as making Monsanto act in the most positive, responsible way to society and our customers, as well as our interests.

However, because of the magnitude and seriousness of this problem and its total implications for Corporate Monsanto, ^{of our plan} your guidance and approval is needed. ~~The final decision on this matter must be made by the CSE.~~

V. Functional Fluids Business Group Discussion:

Aroclors are used widely in 3 of our 4 market areas in the Fluids Group:

MOHS 058739

-18-

FLUIDS USE OF AROCLORS
BY MARKET AREA

<u>AROCLOR PRODUCT</u>	<u>DOMESTIC MARKET AREA</u>			<u>TOTAL</u>
	<u>INDUSTRIAL</u>	<u>HEAT TRANSFER</u>	<u>ELECTRICAL</u>	
1242	4.1	1.1	36	41.2
1248	1.2	1.0	-	2.2
1254	-	0.1	0.8	0.9
1260 & Above	<u>0.6</u>	<u>-</u>	<u>3.5</u>	<u>4.1</u>
	5.9	2.2	40.3	48.4

MONS 058740

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SOURCES OF FLUIDS POLLUTION

<u>APPLICATION</u>	<u>INTENSITY OF POLLUTION</u>
INDUSTRIAL FLUIDS	GREATEST (DIRECT)
DIELECTRICS	(INDIRECT CONTAINED)
HEAT TRANSFER	(INDIRECT CONTAINED)
PRODUCING PLANTS	LEAST (DIRECT)

MONS 058741

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-12-

FLUIDS CUSTOMER ALTERNATIVES

<u>AREA OF APPLICATION</u>	<u>PRODUCT OF CHOICE</u>	<u>CUSTOMER OPTIONS</u>
Industrial Fluids	Pydraul 312/P-9/ A-200/Phosphate Esters/ Water Glycol	Customer could get along without us, but Pydraul 312 favored. H ₂ O Glycol has some pollution problems. Phosphate ester route ok at present.
Transformer	Air/Oil/Aroclor/Gas	Could drop Aroclor at sacrifice of safety, cost or size of equipment or noise level.
Capacitors	Aroclors	No immediate replacement available. Longer term - oil at expense of size and cost of efficiency and redesign of equipment.
Heat Transfer	Therminol	No option for FR liquid market. Other system possibility.
	Oil/Dowtherm/T66 T55 T77 T88	Liquid systems favored. T66 and T55 increasing rapidly in use. Oil also a pollution problem.

MONS 058742

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~~-14~~

Customer Choices & Alternatives & Penalties:

Summarizing, some of our customers have no immediate alternative, some could change only at sacrifices of safety, or cost or various technical factors. Only in the Industrial field could the customer make an immediate conversion.

PCB Threat to Functional Fluids Business and Profit:

MOHS 058743

-15-

FLUIDS BUSINESS THREATENED(1970 BUDGET)

<u>PROBLEM</u>	<u>SALES</u>	<u>GROSS PROFIT</u>
1. Confined to A-1254/ 1260 only.	\$ 3.0 M	\$1.35 M
2. Spreads to A-1242 and 1248		
First to:		
a) Industrial Fluids	\$ 4.0 M	\$1.6 M
Then to:		
b) Dielectric Fluids	\$ 8.0 M	\$3.8 M
Then to:		
c) Heat Transfer	\$ 1.0 M	\$.6 M
	<u>\$16.0 M</u>	<u>\$7.35 M</u>

Turn over to Jim Springett

MONS 058244

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VI

PLASTICIZERS
(WORLD-WIDE)

	<u>ALL AROCLORS</u>	<u>AROCLOR 1254/1260</u> <u>TYPE</u>
1969 SALES, DOLLARS	\$ 6.0 M	\$1.7 M (28%)
POUNDS	34.0 M	9.5 M (28%)
GROSS PROFIT	\$ 2.5 M	\$0.8 M (32%)

MONS 058745

-16-

COMMENTS: DISTINCTIONS FROM F.P.

1. Large number of direct U.S. customers - 570.
2. Customers are small: 23 direct customers - 47% A-1254/1260 sales.
3. 50% domestic A-1254/1260 sales through distributors - difficult to police.

MONS 058746

17

<u>MARKETS</u>	<u>1968 SALES</u>	<u>MAJOR AROCLOR USED</u>
Carbonless Carbon Paper	8.8 M lb.	Aroclor 1242
Hot Melt Adhesives	5.7 M lb.	Aroclor 5460
Swimming Pool Paints	1.7 M lb.	Aroclor 1254) Aroclor 5460)
Protective Coatings	5.3 M lb.	Aroclor 1254) Aroclor 5460)
Adhesion Adhesives	1.5 M lb.	Aroclor 1254) Aroclor 1260)
Sealants	3.0 M lb.	Aroclor 1254) Aroclor 1252)
War Modification	2.0 M lb.	Aroclor 1254) Aroclor 5460)
Miscellaneous	5.0 M lb.	Aroclor 1254) Aroclor 1252)

COMMENTS:

1. AOC major customer (85% of Aroclor 1242 sold).
2. 15% of domestic Aroclors sold through distributors.

MOHS 059747

POSSIBLE CONTAMINATION SOURCES(PLASTICIZERS)

<u>DEGREE OF CONTAMINATION</u>	<u>MARKET</u>	<u>APPLICATION</u>	<u>SOURCE</u>	<u>IS A-1254 /1260 USED?</u>
Most	Coatings	Marine Paints } Water tank } linings }	Leaching	Yes
	Coatings	Swimming Pool Paints	Leaching	Yes
	Carbonless Carbon Paper	-	Vaporization	No
	Wax Modification	-	Vaporization	Yes
	Emulsion Adhesives	-	Contact with product via packaging. In- cineration.	Yes
	Hot Melt Adhesives	-	Contact with product via packaging. In- cineration.	No
Least	Sealants	Automotive Construction joint sealants	Long-term leaching	Yes

- COMMENTS:
1. Unlike fluids, Aroclor plasticizers are combined into plastics to produce the final product - therefore, far less mobile.
 2. Problems such as wastes from our manufacturing plant, customers plants and and leasing of drums common to both groups.
 3. Exterior protective coatings are not considered a high potential source.
 4. Vaporization of Aroclors during plant processing or during product use. Rain will wash vapors back to earth.

MONS 058748

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PLASTICIZER BUSINESS THREATENED

<u>PROBLEM</u>	<u>SALES RETAINED*</u>	<u>\$ G.P. RETAINED (LOST)</u>
1. Confined to A-1254/1260 type only.	\$4.3 M	\$1.7 M (-\$0.8 M)
2. Spreads to all chlorinated biphenyls.	\$2.0	\$0.6 M (-\$1.9 M)
3. Spreads to all PCB's and all chlorinated terphenyls	0.0	0.0 (-\$2.5 M)

*Based on 965 prospects.

COMMENTS: Plasticizers sell Aroclor 1262/4465 which are very close to A-1254/1260 and these have been included as A-1254/1260.

MONS 058749

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RECOMMENDED ACTION PLAN

THE JOINT ACTION PLAN DEVELOPED BY THE FUNCTIONAL FLUIDS AND PLASTICIZER BUSINESS GROUPS, AND THE MEDICAL AND LAW DEPARTMENTS IS AS FOLLOWS:

1. Appoint a Project Manager - responsible for the overall management of the Aroclor pollution problem. He would be assisted by a Task Force from members of each Business Group plus Medical, Law, Engineering and Manufacturing.
2. Notify all Aroclor customers of PCB problem and relabel containers - within 60 days.
3. Clean up Monsanto plants' effluents within 12 months.
4. Develop and implement new packaging systems for Aroclor 1254/1260 - within 6 months.
5. Educate customers on need for clean-up at their plants - within 4 months.
6. Introduce to market, replacement products for Aroclor 1254/1260. - beginning 1/1/70 (Fluids), 4/1/70 (Plasticizers).

MONS 058750

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21

RECOMMENDED ACTION PLAN

7. Continue and expand biodegradation test program with Aroclor series, particularly 1242, 1248 and 1254.
8. Continue toxicological test program.
9. Accelerate present analytical test program.
10. Determine feasibility and cost of eliminating 5/6 Cl₂ in Aroclors 1242 and 1248. (3/70)
11. Study incineration products. (3/70)
12. Develop business plan to offer:
Monsanto Fluid Reclamation and Recovery
with Enviro Chem (4/70). (Reclamation
already underway at Findett.)

MONS 058751

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~~22~~

WHAT COULD WE EXPECT FROM THIS PROGRAM?

Through this action program, Monsanto would expect to:

1. Retain or convert a good portion of our business and profits:

<u>PROBLEMS</u>	<u>CONVERT OR RETAIN</u>	<u>\$M SALES OUT OF PRESENT</u>	<u>ODDS OF SUCCESS</u>
a. Confined to A-1254/ 1260.	\$20.3 M	\$22 M	70%
b. Spreads to A-1248 and 1242.	\$10 M	\$22 M	60%

2. Gain further valuable knowledge and time to:
 - a. Learn more facts.
 - b. Protect our position.
 - c. Make further decisions regarding our program.
 - d. Contribute to overall pollution knowledge.
3. Clean-up the major contributing PCB pollution factors.
4. Minimize customer complaints and hardships.

MONS 058752

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The Program Would:

1. Cost some money.
Est. SARE - \$400-500 M
Est. Capital - \$700 M
\$1.1 B - 1.2 B
2. Expose us to continued adverse publicity and possible law suits.
3. Cause some customer discontent - but much less than an abrupt termination of production.

MDNS 058753

EXHIBIT B

(MONS 061332)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

October 11, 1937.

Experimental work in animals shows that prolonged exposure to Aroclor vapors evolved at high temperatures or by repeated oral ingestion will lead to systemic toxic effects.

Repeated bodily contact with the liquid Aroclors may lead to an acne-form skin eruption.

Suitable draft ventilation to control the vapors evolved at elevated temperatures, as well as protection by suitable garments from extensive bodily contact with the liquid Aroclors, should prevent any untoward effect.

In talking with Dr. Kelly before these three paragraphs were written, we agreed that they might as well be phrased so that they could be used not only in the Aroclor booklet, but quoted in correspondence as that may be necessary.

L.A. Watt



MONS 061332

Attachment 3-2

3.2

CV96-J-0440-E
DATE 04/02/01

PLFF EXHIBIT NO. 877

EXHIBIT C

(MON 095196-7)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

COPY

Dr. D.V.N. Hardy ✓
Dr. H.R. Newman.

Monsanto Chemical Company

St. Louis, Missouri

September 20, 1955

Dr. J.W. Barrett
London

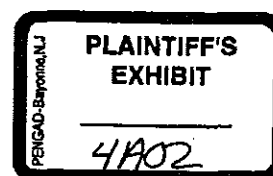
Your memo September 8 to Mr. Nason
AROCOR TOXICITY

Howard Nason has given me your memo of September 8. I will be happy to discuss this with Dr. Newman during his visit here. I think, however, there are several points that I can answer you now.

You comment upon the difference in toxicity between Aroclor 1254 and 1242. This is not particularly surprising because in the earlier work it was found that toxicity increased with chlorination. Of course, from the standpoint of volatility in the case of inhalation or absorption from the gut from the point of view of ingestion are important. Frankly, there was not too great a difference between the two compounds, however. As you know, the maximum allowable concentration is 0.1 ml/cubic meter in the case of 1254, and as high as 10.0 mgm in the case of 1268. I think the former is too low and the latter is too high. In this country they don't use the MACs very routinely, but certainly in England I think it would be alright to consider 0.2 mgm/cubic meter as perfectly safe.

I don't know how you would get any particular advantage in doing more work. What is it that you want to prove? I believe your work should be directed towards finding out what the concentrations are of Aroclor during different operations whether it is industrial or painting. The reports you have seen from Kettering Laboratory are the result of approximately \$15,000 to \$20,000 expenditure by MCC.

MCC's position can be summarized in this fashion. We know Aroclors are toxic but the actual limit has not been precisely defined. It does not make too much difference, it seems to me, because our main worry is what will happen if an individual develops any type of liver disease and gives a history of Aroclor exposure. I am sure the juries would not pay a great deal of attention to MACs.



COPY

Page 2 September 20, 1955 AROCLOR TOXICITY

We, therefore, review every new Aroclor use from this point of view. If it is an industrial application where we can get air concentrations and have some reasonable expectation that the air concentrations will stay the same, we are much more liberal in the use of Aroclor. If, however, it is distributed to householders where it can be used in almost any shape and form and we are never able to know how much of the concentration they are exposed to, we are much more strict. No amount of toxicity testing will obviate this last dilemma and therefore I do not believe any more testing would be justified.

Let's see what our discussions with Dr. Newman and yourself bring out.

R. Emmet Kelly, M.D.

REK:k

MONS 095197

EXHIBIT D

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

From **MONSANTO CHEMICAL COMPANY**

cc Mr. J. Cresce -Krumm. Plt
Mr. E. W. Lieben -" "
Mr. R. M. Webber -" "

At St. Louis

CONFIDENTIAL

Date November 14, 1955

To Mr. H. B. Patrick Reference

At Krummrich Plant Subject DEPARTMENT 246 (AROCLORS)

It is the opinion of the Medical Department that the eating of lunches should not be allowed in this department for a number of reasons.

- (1) Aroclor vapors and other process vapors could contaminate the lunches unless they were properly protected.
- (2) When working with this material, the chance of contaminating hands and subsequently contaminating the food is a definite possibility.
- (3) It has long been the opinion of the Medical Department that eating in process departments is a potentially hazardous procedure that could lead to serious difficulties. While the Aroclors are not particularly hazardous from our own experience, this is a difficult problem to define because early literature work claimed that chlorinated biphenyls were quite toxic materials by ingestion or inhalation. In any case where a workman claimed physical harm from any contaminated food, it would be extremely difficult on the basis of past literature reports to counter such claims.

Jack T. Garrett
Jack T. Garrett

JTG:SMB

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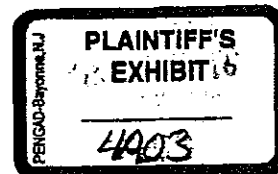


EXHIBIT E

(MONS 095640)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

St. Louis, Missouri

January 21, 1957

Messrs.:
G. R. Buchanan - Robts.
R. S. Hatton - H.C.
F. H. Langenfeld-Robts.
H. S. Litzinger-Robts.
G. R. Sido-Washington, D.

Mr. H. I. Armstrong
Roberts Building

HYDRAUL 150

lm
2/10/57

Dr. Treon and I spent an afternoon with the Navy people to discuss Hydraul 150. Those present were Captain Shone, Captain Alvie, Captain Sessions, Commander Siegel and Mr. Mickey Albert. They discussed their information concerning Hydraul 150 which was obtained at the Naval Institute of Medical Research. While reports were not available, they had the following general data:

skin applications of Hydraul 150 caused death in all of the rabbits tested. (The amount administered was not given.) A like amount of Cellulube 220 did not cause any deaths.

The inhalation of 10 milligrams of Hydraul 150 per cubic meter or approximately 2 tenths of a part of the Aroclor component per million for 24 hours a day for 50 days caused, statistically, definite liver damage. No matter how we discussed the situation, it was impossible to change their thinking that Hydraul 150 is just too toxic for use in a submarine. It may be that such concentrations would never be reached in the submarine but the Navy does not appear willing to even put the material in a trial run to see if it will work.

It would appear, therefore, that we should discontinue to sell Hydraul 150 for this particular application and try to develop a hydraulic fluid without Aroclor as one of its components. In this connection, Cellulube 220 is not used in a submarine but it was used in this test merely as a yardstick.

The Navy said they did not have any competitive fluid far enough along engineering-wise to even consider the toxicity of it.

R. Emmet Kelly, M.D.

REK:MB

MONS 095640



EXHIBIT F

(MONS 096509-096511)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

MEMORANDUM

TO : W. H. Richard - Research Center

DATE	March 6, 1969	H. Eorgen	HBERG
		J. Springate	JSPRNG
SUBJECT	<u>AROCLOX WILDLIFE ACCUSATIONS</u>	W. Schalk	WSCHAL
		D. Olson	DOOLSO
REFERENCE		R. Kelly	RKELLY
		J. Garrett	JGARRE
TO :	E. Wheeler - EWHEE	F. Hodges	FHODGS
		P. Park	PPARK
		R. Keller	RKELL
		E. Tucker	ETUCKE

Risebrough in a recent paper "Nature", Vol. 220, Dec. 14, 1958, has attacked chlorinated biphenyls in three ways:

- (1) a pollutant - widely spread by air-water; therefore an uncontrollable pollutant.
- (2) a toxic substance - with no permissible allowable levels causing extinction of peregrine falcon by induced hepatic enzymes which degrade steroids upsetting Ca metabolism leading to reproductive weakness, presumably through thinner egg shells.
- (3) a toxic substance endangering man himself; implying that the peregrine falcon is a leading indicator of things to come.

As outlined in Science, Vol. 163, Pg. 548, Environmental Defense Fund (EDF) is attempting to write new legal precedents in conservation law by hearings and court action. In the Wisconsin case, water quality standards are at issue. "A substance shall be regarded as a pollutant if its use results in public health problems or in acute or chronic (injury) to animal, plant or aquatic life". Wisconsin is one of 7 states which now have federally approved water quality standards. According to Bern Wright, acting chief of the Federal Water Pollution Control Administration's Water Quality Standards Branch, DDT would fit the definition of a pollutant upon a showing that it is harmful to aquatic life.

These people in EDF are saying we must not put stress on any living thing through a change in air or water environment. Eagles, plant life, anything which lives or breathes. This group is pushing hard on the extension of the word harmful. They claim "enzyme inducer" activity is the real threat of DDT and PCB's and are using these arguments to prove that very small amounts of chlorinated hydrocarbons are "harmful".

Monsanto is preparing to challenge certain aspects of this problem but we are not prepared to defend against all of the accusations.

- (a) Monsanto is preparing itself to identify trace ppb quantities of chlorinated biphenyls in water samples, in concentrated collected air samples, and in animal tissues. We will know whether we have been falsely identified and accused or not. We will eventually know where any pollution is taking place and the extent of the pollution.

MONS 096509

CV96-J-0440-E
DATE 04/02/01

PLFF EXHIBIT NO. 143

E. Wheeler

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March 6, 1969

- (b) We are not prepared to defend ourselves against the accusations made of enzyme and hormone activity, the isolation of enzymes or metabolic products, the indirect accusation of cancer, or the splitting of genes, when this accusation is made. Whether we can defend this route or not needs further discussion.
- (c) Through the Industrial Bio-Test program we are to establish the long term allowable limits of chlorinated biphenyl for certain birds-fish-animals by feeding experiments, pathological examination, and tissue analysis for chlorinated biphenyls. We may be able to answer reproductive ability in some animals.

DDT has been under attack for some years because of its chlorine content, its persistent ability to be identified, and the wildlife problems attributed to it. We will still be under the same attack by the mechanisms listed in (b) even though we might establish safe operating limits for humans and certain animals.

Where does this leave us?

Under identification and control of exposure - we will be able to identify and analyze residues as well or better than anyone in the world. We will probably find residues other than DDT and PCB's. We will probably wind up sharing the blame in the ppm to ppb concentration level.

We can take steps to minimize pollution from our own chlorinated biphenyl plants, we can work with our larger customers to minimize pollution, we can continue to set up disposal and reclaim operations. We can work for minimum exposure in manufacture and disposal of capacitors, transformers and heat transfer systems, and minimize losses for large hydraulic users.

But, we can't easily control hydraulic fluid losses in small plants. It will be still more difficult to control other end uses such as cutting oils, adhesives, plastics and HCR paper. In these applications exposure to consumers is greater and the disposal problem becomes complex. If chlorinated biphenyl is shown to have some long term enzyme or hormone activity in the ppm range, the applications with consumer exposure would cause difficulty.

Risebrough has taken known Aroclor samples and claims to have evidence of enzyme and hormone change. Here there is no question of identification. Either his position is attacked and discounted or we will eventually have to withdraw product from end uses which have exposure problems. Since Risebrough's paper in "Nature", Dec. 1968 has just been published, it is timely, perhaps imperative, that this paper and its implications be discussed with certain customers. This is a rough one because it could mean loss of business on empty and false claims by Risebrough.

Well prepared discussions with Ind. Bio-Test, Monsanto biocientists, the medical and legal departments must take place now. The

MONS 096510

E. Wheeler

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March 6, 1963

position of DDT manufacturers should be determined as a guide.
We are being accused of the same things attributed to DDT.

I have written this memo to clarify some of the issues. May I
please have comments.

Thanks,

W. R. Richard

me

Att.

HONS 096511

EXHIBIT G

(DSW 014256-014263)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

Monsanto

FROM (NAME & LOCATION): W. R. Richard - Research Center

DATE: September 9, 1969

cc P. Hodges PHODG
M. Farrar Res. 1
H. Bergen HBERG

SUBJECT: DEFENSE OF AROCLOR -
F. FLUIDS

REFERENCE

TO: E. Wheeler - EWHEE

General Policy

Make the Govt., States and Universities prove their case, but avoid as much confrontation as possible. Comply and work with public officials to meet or exceed requirements ahead of time. Adverse publicity and competition are the real weapons.

Analytical { In Air - Which Aroclors are present? Where?
for Aroclor { In Water - Which compounds? } Govt.
 { In Animals - interfere? } Agencies

Keep track of how much contamination - which sources.

Prove Bioharmful - Let Govt. prove its case, on case by case basis

Monsanto Visit-Govt. Biolabs - in search of toxicological experiments and evidence vs. Aroclors to keep up with progress.

Monsanto Prove Bioharmless - Limited work at Ind. Bio-test -

"Safe" toxic level for { man
 { mammals via Rats
 { fish Chickens
 Fish
 Seek evidence of Biodegradation
 Question evidence against us.
 Question shrimp toxicology especially other toxic chemicals.
 If Aroclor bad, others must be worse.

Probable Outcome

We can prove some things are OK at low concentration. Give Monsanto some defense.

We can't defend vs. everything. Some animals or fish or insects will be harmed.

Aroclor degradation rate will be slow. Tough to defend against. Higher chlorination compounds will be worse than lower chlorine compounds.

Therefore we will have to restrict uses and clean-up as much as we can, starting immediately.

for...?

which one?

DSW 014256

Therefore we will have to work for alternate products in end use applications; for Aroclor production facilities.

Clean Up Aroclors and substitute products where necessary and when required, before threats of publicity and competitive activity overwhelm us.

Water Pollution seems to be first issue

Aroclor product is refractive, will settle out on solids - sewerage sludge - river bottoms, and apparently has a long life.

Florida or Gulf Coast - Aroclor 1254 - Aroclor 1260 present issue.

40-200 ppb - causing problem at Pensacola (Monsanto) in plant effluent-causing " with shrimp.
- can't risk shut-down of plant.

Federal and State can extrapolate to other plants in Gulf area.

San Francisco - Aroclor 1254 and 1260

Reported Aroclor to be present in San Francisco Bay.

Reported to be thin egg shells in birds -

Lot of screaming -

Great Lakes

Warf studies on DDT

Aroclor 1254 will be found!

Aroclor 1242 will be found?

Air Pollution - Possible spread - but less of an issue right now.

Analytical work more difficult.

Direct Contact with Product

Doesn't seem to be an issue - except for food heat transfer.

We don't believe Aroclor is being used as carrier for insecticide - sprayed around -

We are not positive but most uses are "closed" systems or products used in solid plastics, or adhesives, or sealants.

Handwritten notes:
Aroclor 1254
Aroclor 1260
Aroclor 1242
Aroclor 1248
Aroclor 1255
Aroclor 1261
Aroclor 1262
Aroclor 1263
Aroclor 1264
Aroclor 1265
Aroclor 1266
Aroclor 1267
Aroclor 1268
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Aroclor 1296
Aroclor 1297
Aroclor 1298
Aroclor 1299
Aroclor 1300

-3-

<u>F. Fluids</u>	<u>Possible Pollution by Customers Plant Operation</u>	<u>Possible Pollution by Customers Proc.</u>
<u>Product</u>		
Hydraulic Fluids	Yes, leakage external	Possible - See Johnson Motors Castings.
Air Compressor Fluids	Yes, leakage external	Leakage into product
Heat Transfer	Yes, leakage external	Leakage into product
Capacitor Fluids	Yes, leakage from plant - Scrap materials.	In product but closed for end use
Transformer Fluids	No, Should be clean. Yes, Reworked transformers	In product but closed for end use

* Capacitors can go to land fill dumps. Probably not burned, in Al containers.

** Need to take care of Aroclor in discarded transformers. Product could be drained and reworked.

Probable Conclusions

Hydraulic Leakage - Product could be caught at machines but will take a lot of clean-up work with customers. - Will have to have replacement product - with less-sensitive components. Work from this base on clean-up to prevent more pollution problems.

Air Compressor Fluids "

Hydraulic Fluids

Must expect "shrimp" experiments, West Florida State, to be "aired" sometime soon; next few months.

This will lead to bad publicity and competitive action vs. all Hydraulics.

We will have to try to confine to Aroclor 1254 and Aroclor 1260.

DSW 014258

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We will have to take action before that time.

Gulf Coast -

Action Be able to replace Aroclor 1254 and Aroclor 1260 in Pydraul AC and 625 in 2 month's time before Nov. 15, 1969.

W. Richard

Fallon/Richard Have trial product in hands of Gulf Coast accounts and distributor before Dec. 15.

Fallon Suggest possible buy of "all phosphate" ester from Food Machinery. Use this as one trial fluid MCS___ for insurance.

Richard/ Suggest possible substitution of Aroclor 5442 for Aroclor 1254 in hydraulic and compressor blends. E. Wheeler judges lower order of toxicity and solubility for 5442 series. Have to test product in pump test for deposits.

Fallon/Richard Suggest field trials of our own all-phosphate ester.

Fallon/Kuhn/Kountz Work with large customers to clean-up streams. Bring in Findett as mfg. partner in the recycle business. Get money out of recycle operations.

Inland-Waterways-

Wheeler/Richard Be close enough to Great Lakes studies to judge situation. Are there animals which are being affected by the concentrations found?

Richard Be prepared to replace Aroclor 1254 and Aroclor 1260 in 4 months in hydraulic fluids and in air compressor fluids.

Richard Be prepared to replace all Aroclor 1242 or 1248 in 6 months in hydraulic fluids. This means replacement of Pydraul 312 series, and control of sale of Aroclor 1248 to other hydraulic accounts such as Cities Service and Mobil.

DSW 014259

Heat Transfer

Fallon/Roush/Kountz Systems will have some leakage depending strongly on engineering and maintenance. Need to work with customers on clean-up.

Fallon/Roush Need to replace FR especially in food or sensitive product areas where the product is getting into water. See dish washer compounds. See letter E. Wheeler to T. Fallon.

We have possible replacement products in Thermint 55.
Thermint 66.

Action

Kuhn Try to assure adequate production of Therminol 66 in face of decreased Aroclor production. H₂ and terphenyl supply may become short.

Switch customers to Therminol 55 or Therminol 66 ahead of pollution problems in customers plant.

Work with customers on plant and dumping practices.

Kuhn/
Fallon Findett already set up to rework. Need to make them a manufacturing arm. We get sale of recycle-rework fluid.

Capacitor Fluids

Capacitor plants have re-purification and recycle systems but up to 5% of product can be lost by poor plant producers and off-quality material.

Capacitor products

Enclosed in Al or stainless steel for 5 to 25 year period.

Mkt. Benignus/
Bryant

5% of production could be 1M lbs/year. This is a big loss for the type of pollution we are trying now to guard against.

Will ultimately have to dispose of capacitor products.

Eng. Kountz/
Mfg-Hodges

Recommend we try to save this product for a time.

Action

Eng., TSD-
Plant Pol-
lution Con-
trol

Monsanto must start to work with capacitor people to clean up plant practices. We have set-up to accept material for rework into hydraulic fluid but this relocation is not a satisfactory solution. Material must be reworked to electrical grade or destroyed, whichever is more economical. Must start now to get control of off-grade material.

Recommend replacement of future Aroclor business with other products. Have 2 years.

Hodges/
Kountz

Action

Monsanto must help plant clean-up of customer plants decantation, coalescing, adsorption, disposal of adsorbent or recycle of adsorbents. Monsanto badly needs "know-how" for clean-up.

Monsanto should seek Govt. contract money for clean-up research, (See MRC R. Binning, D. Nelson)

DSW 014260

Transformers

Transformer Plant can operate in a clean, efficient manner with recycle of off-grade Aroclor.

Product transformer can remain closed & no exposure for 25

Action

Benignus/
Bryant

Should advise disposal of filter element materials so as to minimize chance of water pollution. Incinerate or dispose.

Reworked transformers pose a threat if the Aroclor is dumped into a water stream.

Should try to retail business by clean-up by education of customers.

Action

Benignus/
Bryant

Should try to minimize chance of dumping "old" fluid by reworking and by educating co. shops and collecting product for rework or disposal.

Dalton is set up in England to rework electrical grade fluid.

Kuhn/Kountz
Findett?

Need rework facility here + disposal scheme.

Monsanto Plants

The Dept. of Interior and/or State authorities could monitor plant outfall and find ppm of chlorinated biphenyls at Krummrich or Anniston anytime they choose to do so. This would shut us down depending on what plants or animals they choose to find harmed.

See progress

Action - Take steps to see that every precaution is taken to prevent Aroclor entering water streams. Try to reduce to ppb level.

P.Hodges - Seek a Govt. contract on adsorption and incineration cycles - MRC.

Engrg. -
Kountz Take samples of streams and river water and mud evidence for before and after clean-up. Samples can be stored for further analysis if we can't keep up current with analytical determinations.

Apply Monsanto clean-up methods to customer plant clean up equipment and procedures.

OSW 014261

Action -
 Engrg. &
 Mfg.
 Kountz
 and
 Kuhn

Evaluate liquid incinerators vs. solids handling incinerators for disposing of Aroclor and pentachlorophenol wastes. I estimate Aroclor disposal at 1-4M lbs/year, exclusive of cleaning up river bottoms or outfall bottoms.

Hydraulics	20% of 4M lbs	800,000 lbs
Heat Transfer	10% of 2M lbs	200,000 lbs
Capacitors	5% of 20M	1,000,000 lbs
Transformers	5% of 15M	750,000 lbs
		<hr/>
		2,750,000 lbs

Central
 Eng. &
 Mfg TSD
 Kountz &
 Kuhn

Set up an incinerator to handle Aroclor disposal - preferably one which will handle solids such as muds - slurries as well as liquids. Have in operation within 12 months. Ideally have incinerators available different sections for disposal.

Possible
 help from
 MRC

Chronic Toxicity Studies - Ind. Bio-Test

Wheeler
 Keller
 Ind.Bio-
 Test

Continue studies to establish FDA type limits of toxicity on Aroclor 1242, Aroclor 1254 and Aroclor 1260.

Rework with R. Keller-S. Tucker the number of samples which are to be analyzed for Aroclor in tissue. Try to see if Aroclors are changed metabolically. Does concentration level off, decline if feeding is stopped?

Institute studies against the most limiting biological parameters. If shrimp are the most limiting species for Aroclor levels of toxicity, then we will have to have biological studies on these species to confirm or deny adverse findings.

DSW 014262

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Biodegradation Studies

Set up rate of biodegradation studies with Inorganic Div.
on Aroclor 1242 vs. Aroclor 1254
Aroclor 5442 vs. Aroclor 5460
Swisher Chlorinated diphenyl ether
Chlorinated paraffin vs. chlorinated naphthalene
Chlorobromo Aroclors 1242 and 1248

Baxter Contact Baxter and Lidgett at MCL regularly for results on
Lidgett Aroclor degradation. They are reported to be moving on
MCL laboratory experiments.

Establish contact with chlorophenol degradation studies
of Cellu-Chem Group.

WRR

W. R. Richard

WRR:ms

DSM 014263

EXHIBIT H

(MONS 098480)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

Elmer P. Wheeler, Medical Department

January 29, 1970

Status of Aroclor Toxicological Studies

J. S. Barrett, ~~Director~~
~~Mr. G. Bergen,~~
W. B. Papageorge, ~~Director~~

D. S. Cameron
Brussels

Enclosed is a copy of the reports from our consulting laboratory indicating the status of the animal toxicity studies. I have summarized the pertinent findings separately and as indicated in the table.

We have given copies of these data to one U. S. customer, the U. S. FDA and one or two other state agencies. I don't see why this information cannot be released with discretion in Britain or Europe.

Our interpretation is that the PCB's are exhibiting a greater degree of toxicity in this chronic study than we had anticipated. Secondly, although there are variations depending on species of animals, the PCB's are about the same as DDT in mammals.

We have additional interim data which will perhaps be more discouraging. We are repeating some of the experiments to confirm or deny the earlier findings and are not distributing the early results at this time.

Elmer P. Wheeler

EPW:ju

Enclosure

MONS 098480



EXHIBIT I

(MONS 058730-058753)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

PCB PRESENTATION
TO
CORPORATE DEVELOPMENT COMMITTEE

I. INTRODUCTION:

We are here today to acquaint you with the PCB (Aroclor) pollution problem and to secure your guidance and approval on a recommended plan of action.

The problem is that Certain PCB's have recently been identified by various scientists along with DDT in fish, birds, and other wildlife.

From the standpoint of reproduction, the PCB's are highly toxic to birds. In a few moments, Elmer Wheeler will describe the problem in detail.

Our objective is to describe for you the basic problems, the issues involved, review alternative courses of action, and suggest an action plan program for your approval.

This is a serious matter, not only from the pollution viewpoint, but also because of the \$22 M worldwide customer business involved with resultant gross profits of \$10 M and a net investment of approximately \$9 M. In addition, there could be possible adverse legal and public relations problems leveled against Monsanto.

Our Agenda will be as follows:

MONS 058730



CV96-J-0440-E
DATE 04/02/01

PLIFF EXHIBIT NO. 205

-2-

PCB AGENDA REVIEW

- I. INTRODUCTION
- II. THE PROBLEM
 - DEVELOPMENTS INCRIMINATING PCB'S
 - COMPLEXITY OF IDENTIFICATION
 - NATURE OF
 - SERIOUSNESS
- III. LAW DEPARTMENT VIEWPOINT AND RECOMMENDATIONS
- IV. EFFECT ON MONSANTO AND ALTERNATIVES
- V. FUNCTIONAL FLUID BUSINESS GROUP DISCUSSION
 - MARKETS, USES
 - SOURCES OF POLLUTION
 - CUSTOMER EFFECT
- VI. PLASTICIZER BUSINESS GROUP DISCUSSION
 - MARKETS, USES
 - SOURCES OF POLLUTION
- VII. RECOMMENDED ACTION PLAN
- ~~VIII.~~ SUMMARY

MONS 058731

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By way of introduction, the Organic Division and the Medical Department has been actively engaged for the last 18 months in developing facts and knowledge on this subject by personal visits to Universities and Industrial test laboratories, other worldwide producers, and other industrial collaborators, as well as keeping abreast of all literature and news sources on the subject as well as funding a toxicological and analytical test program in excess of \$100 M. We established an Ad Hoc Committee of both Business Groups and Medical which recently issued a report - much of which will be discussed today. We have learned a lot, but there is much yet to learn as you will hear.

What are PCB's? They are polychlorinated biphenyls - better known to us as Aroclors. The next slide will quickly re-familiarize you with our Aroclor business.

NONS 058732

MONSANTO WORLDWIDE AROCLOR BUSINESS

POUNDS/YEAR	104 M (70 M in Functional Fluids 34 M in Plasticizers)
SALES/YEAR	\$22 M (\$16 M in Functional Fluids \$ 6 M in Plasticizers)
GROSS PROFIT/YEAR	\$10.0 M (\$7.5 M in Functional Fluids \$2.5 M in Plasticizers)
GROSS INVESTMENT	\$13 M (\$8.8 M net investment)
ROI	10.5%
WORLDWIDE M/I	62%
MONSANTO PRODUCTION LOCATIONS:	USA (2 plants, Anniston, Alabama Sauget, Illinois)
	UK (Newport)
	JAPAN (Yokkaichi)
OTHER PRODUCERS:	Bayer, Prodelec, Caffaro, Flick, Kanegahuchi, and several Eastern European producers (all ex-USA)
	Q by UK

MONS 058733

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THE AROCLOR PRODUCT LINE

<u>CHEMICAL NAME</u>	<u>TRADE NAME</u>	<u>NATURE OF MATERIAL</u>	
MONOCHLOROBIPHENYL	AROCLOR 1221	THIN LIQUID	
DICHLOROBIPHENYL	AROCLOR 1232	↓	
TRICHLOROBIPHENYL	AROCLOR 1242		OILY LIQUID
TETRACHLOROBIPHENYL	AROCLOR 1248		
PENTACHLOROBIPHENYL	AROCLOR 1254		HEAVY MOLASSES
HEXACHLOROBIPHENYL	AROCLOR 1260		THICK TAR
HEPTACHLOROBIPHENYL	AROCLOR 1262		
OCTACHLOROBIPHENYL	AROCLOR 1268	↓	
DECACHLOROBIPHENYL	AROCLOR 1270	SOLID	
TERPHENYLS	SANTOWAX	↓	
CHLORINATED TERPHENYL	AROCLOR 5460	SOLID	

MONS 058734

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There are theoretically 210 different isomers of chlorinated biphenyls.

Monsanto entered the Aroclor market in 1930 by acquiring Swan Chemical Company. The first load of Aroclor went out of Anniston, Alabama to General Electric in 1931. Since then, the market has grown to one of Monsanto's most profitable franchises. This franchise is now being threatened by ^{not by competition of} recently found pollution problems which Elmer Wheeler will now discuss.

II. The Problem (Wheeler) - see attached Appendix A

III. Law Department Viewpoint and Recommendations (French)

IV. Effect on Monsanto and Our Alternative Courses of Action

As discussed, Aroclors 1254 and 1260 -- the 5 and 6 Cl ringed biphenyls are the ones most seriously involved in the pollution problem. Both Plasticizers and Fluids Groups are involved as shown:

MONS 058735

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AROCLOR SALES
(M POUNDS)

	<u>FLUIDS</u>	<u>PLASTICIZERS</u>	<u>TOTAL</u>
AROCLOR 1254	1.45	5.4	6.85
AROCLOR 1260 & ABOVE	<u>3.7</u>	<u>1.7</u>	<u>5.4</u>
	5.15	7.1	12.25

MONS 058736

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We considered 4 alternative courses of action:

(Slide)

Alternative 1: Do nothing was considered unacceptable from a legal, moral, ~~and~~ customer, public relations & company policy viewpoint. This is also the quickest route to being forced out of business.

Alternative 2: Go out of total Aroclor business was considered unacceptable from a Divisional viewpoint, but from a Corporate viewpoint may be necessary. ~~Only you can make that decision.~~ All Aroclor products are not serious pollutants - many degrade; there is too much customer/market need and selfishly too much Monsanto profit to go out. To go out would require a write off of Aroclor net investment of \$7 M (10¢/share) or if biphenyl included \$8.8 M (12¢/share). In addition, inventory disposition, continuing cost of utilities, and back-up capital and serious manpower & resources reallocation at Anniston.

Alternative 3: Go out of Aroclor 1254 and 1260. This was seriously considered and may eventually occur by our actions and customer actions, nevertheless, we feel that segments of this business are defensible or are so "confined" in use that specific plans of action are called for this portion. Our reasons for eliminating this alternative will become clearer as we outline our action plans.

MONS 058737

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ALTERNATIVE COURSES OF ACTION

1. DO NOTHING - JUST REACT TO LEGISLATION AND EMOTION.
2. GO OUT OF TOTAL AROCLOR BUSINESS.
3. GO OUT OF AROCLOR 1254 AND 1260 PRODUCTION
4. DEVELOP SPECIFIC ACTION PLANS "TAILORED" TO EACH BUSINESS GROUP AND EACH CUSTOMER/MARKET SITUATION TO "CLEAN UP" THE MESS.

MONS 058738

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-10-

Alternative 4: Develop specific action plans tailored to each Business Group and each customer/market situation, - was the alternative selected at this point of time and based on our knowledge from a Divisional viewpoint as making Monsanto act in the most positive, responsible way to society and our customers, as well as our interests.

However, because of the magnitude and seriousness of this problem and its total implications for Corporate Monsanto, ^{of our plan} your guidance and approval is needed. ~~the final decision on this matter must be made by the CDB.~~

V. Functional Fluids Business Group Discussion:

Aroclors are used widely in 3 of our 4 market areas in the Fluids Group:

MGNS 058739

-14-

FLUIDS USE OF AROCLORS
BY MARKET AREA

<u>AROCLOR PRODUCT</u>	<u>DOMESTIC MARKET AREA</u>			<u>TOTAL</u>
	<u>INDUSTRIAL</u>	<u>HEAT TRANSFER</u>	<u>ELECTRICAL</u>	
1242	4.1	1.1	36	41.2
1248	1.2	1.0	-	2.2
1254	-	0.1	0.8	0.9
1260 & Above	<u>0.6</u>	<u>-</u>	<u>3.5</u>	<u>4.1</u>
	5.9	2.2	40.3	48.4

MONS 058740

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SOURCES OF FLUIDS POLLUTION

<u>APPLICATION</u>	<u>INTENSITY OF POLLUTION</u>
INDUSTRIAL FLUIDS	GREATEST (DIRECT)
DIELECTRICS	(INDIRECT CONTAINED)
HEAT TRANSFER	(INDIRECT CONTAINED)
PRODUCING PLANTS	LEAST (DIRECT)

MONS 058741

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FLUIDS CUSTOMER ALTERNATIVES

<u>AREA OF APPLICATION</u>	<u>PRODUCT OF CHOICE</u>	<u>CUSTOMER OPTIONS</u>
Industrial Fluids	Pydraul 312/F-9/ A-200/Phosphate Esters/ Water Glycol	Customer could get along without us, but Pydraul 312 favored. H ₂ O Glycol has some pollution problems. Phosphate ester route ok at present.
Transformer	Air/Oil/Aroclor/Gas	Could drop Aroclor at sacrifice of safety, cost or size of equipment or noise level.
Capacitors	Aroclors	No immediate replacement available. Longer term - oil at expense of size and cost of efficiency and redesign of equipment.
Heat Transfer	Therminol	No option for FR liquid market. Other system possibility.
	Oil/Dowtherm/T66 T55 T77 T88	Liquid systems favored. T66 and T55 increasing rapidly in use. Oil also a pollution problem.

MONS 058742

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~~-14-~~

Customer Choices & Alternatives & Penalties:

Summarizing, some of our customers have no immediate alternative, some could change only at sacrifices of safety, or cost or various technical factors. Only in the Industrial field could the customer make an immediate conversion.

PCB Threat to Functional Fluids Business and Profit:

MONS 058743

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FLUIDS BUSINESS THREATENED
(1970 BUDGET)

<u>PROBLEM</u>	<u>SALES</u>	<u>GROSS PROFIT</u>
1. Confined to A-1254/ 1260 only.	\$ 3.0 M	\$1.36 M
2. Spreads to A-1242 and 1248		
First to:		
a) Industrial Fluids	\$ 4.0 M	\$1.6 M
Then to:		
b) Dielectric Fluids	\$ 8.0 M	\$3.8 M
Then to:		
c) Heat Transfer	\$ 1.0 M	\$.6 M
	<u>\$16.0 M</u>	<u>\$7.36 M</u>

Turn over to Jim Springett

MONS 058744

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VI

PLASTICIZERS
(WORLD-WIDE)

	<u>ALL AROCLORS</u>	<u>AROCLOR 1254/1260</u> <u>TYPE</u>
1969 SALES, DOLLARS	\$ 6.0 M	\$1.7 M (28%)
POUNDS	34.0 M	9.5 M (28%)
GROSS PROFIT	\$ 2.5 M	\$0.8 M (32%)

MONS 058745

-16-

COMMENTS: DISTINCTIONS FROM F.P.

1. Large number of direct U.S. customers - 570.
2. Customers are small: 23 direct customers - 47% A-1254/1260 sales.
3. 50% domestic A-1254/1260 sales through distributors - difficult to police.

MONS 058746

17

<u>MARKETS</u>	<u>1968 SALES</u>	<u>MAJOR AROCLOR USED</u>
Carbonless Carbon Paper	8.8 M lb.	Aroclor 1242
Hot Melt Adhesives	5.7 M lb.	Aroclor 5460
Swimming Pool Paints	1.7 M lb.	Aroclor 1254 } Aroclor 5460 }
Protective Coatings	5.3 M lb.	Aroclor 1254 } Aroclor 5460 }
Emulsion Adhesives	2.5 M lb.	Aroclor 1254 } Aroclor 1260 }
Sealants	3.0 M lb.	Aroclor 1254 } Aroclor 1260 }
Wax Modification	2.0 M lb.	Aroclor 1254 } Aroclor 5460 }
Miscellaneous	5.0 M lb.	Aroclor 1242 } Aroclor 1254 }

- COMMENTS:
1. POC major customer (85% of Aroclor 1242 sold).
 2. 10% of domestic Aroclors sold through distributors.

MONS 058747

18

POSSIBLE CONTAMINATION SOURCES
(PLASTICIZERS)

<u>DEGREE OF CONTAMINATION</u>	<u>MARKET</u>	<u>APPLICATION</u>	<u>SOURCE</u>	<u>IS A-1254 /1260 USED?</u>
Most	Coatings	Marine Paints } Water tank } linings }	Leaching	Yes
	Coatings	Swimming Pool Paints	Leaching	Yes
Least	Carbonless Carbon Paper	-	Vaporization	No
	Wax Modification	-	Vaporization	Yes
	Emulsion Adhesives	-	Contact with product via packaging. In- cineration.	Yes
	Hot Melt Adhesives	-	Contact with product via packaging. In- cineration.	No
	Sealants	Automotive Construction Joint sealants	Long-term leaching	Yes

- COMMENTS:
1. Unlike fluids, Aroclor plasticizers are combined into plastics to produce the final product - therefore, far less mobile.
 2. Problems such as wastes from our manufacturing plant, customer plants and and leasing of drums common to both groups.
 3. Exterior protective coatings are not considered a high priority source.
 4. Vaporization of Aroclors during plant processing or during product. Rain will wash vapors back to earth.

MONS 058748

19

PLASTICIZER BUSINESS THREATENED

<u>PROBLEM</u>	<u>SALES RETAINED*</u>	<u>\$ G.P. RETAINED (LOST)</u>
1. Confined to A-1254/1260 type only.	\$4.3 M	\$1.7 M (-\$0.8 M)
2. Spreads to all chlorinated biphenyls.	\$2.0	\$0.6 M (-\$1.9 M)
3. Spreads to all PCB's and all chlorinated terphenyls	0.0	0.0 (-\$2.5 M)

*Based on 165 prospects.

COMMENTS - Plasticizers sell Aroclor 1262/4465 which are very close to A-1254/1260 and these have been included as A-1254/1260.

MONS 058749

- 2 -

RECOMMENDED ACTION PLAN

THE JOINT ACTION PLAN DEVELOPED BY THE FUNCTIONAL FLUIDS AND PLASTICIZER BUSINESS GROUPS, AND THE MEDICAL AND LAW DEPARTMENTS IS AS FOLLOWS:

1. Appoint a Project Manager - responsible for the overall management of the Aroclor pollution problem. He would be assisted by a Task Force from members of each Business Group plus Medical, Law, Engineering and Manufacturing.
2. Notify all Aroclor customers of PCB problem and relabel containers - within 60 days.
3. Clean up Monsanto plants' effluents within 12 months.
4. Develop and implement new packaging systems for Aroclor 1254/1260 - within 6 months.
5. Educate customers on need for clean-up at their plants - within 4 months.
6. Introduce to market, replacement products for Aroclor 1254/1260. - beginning 1/1/70 (Fluids), 4/1/70 (Plasticizers).

MONS 058750

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RECOMMENDED ACTION PLAN

7. Continue and expand biodegradation test program with Aroclor series, particularly 1242, 1248 and 1254.
8. Continue toxicological test program.
9. Accelerate present analytical test program.
10. Determine feasibility and cost of eliminating 5/6 Cl₂ in Aroclors 1242 and 1248. (3/70)
11. Study incineration products. (3/70)
12. Develop business plan to offer:
Monsanto Fluid Reclamation and Recovery
with Enviro Chem (4/70). (Reclamation
already underway at Findett.)

MONS 058751

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~~22~~ 22WHAT COULD WE EXPECT FROM THIS PROGRAM?

Through this action program, Monsanto would expect to:

1. Retain or convert a good portion of our business and profits:

<u>PROBLEMS</u>	<u>CONVERT OR RETAIN</u>	<u>\$M SALES OUT OF PRESENT</u>	<u>ODDS OF SUCCESS</u>
a. Confined to A-1254/ 1260.	\$20.3 M	\$22 M	70%
b. Spreads to A-1248 and 1242.	\$10 M	\$22 M	60%

2. Gain further valuable knowledge and time to:
 - a. Learn more facts.
 - b. Protect our position.
 - c. Make further decisions regarding our program.
 - d. Contribute to overall pollution knowledge.
3. Clean up the major contributing PCB pollution factors.
4. Minimize customer complaints and hardships.

MONS 058752

~~22~~
23

The Program Would:

1. Cost some money.
Est. SARE - \$400-500 M
Est. Capital - \$700 M
\$1.1 M - 1.2 M
2. Expose us to continued adverse publicity and possible law suits.
3. Cause some customer discontent - but much less than an abrupt termination of production.

MDNS 058753

EXHIBIT J

(MONS 030483-030486)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

CONFIDENTIAL

MINUTES OF AROCLOR "AD HOC" COMMITTEE

First Meeting

Date: September 5, 1969

Present: M. W. Farrar
P. B. Hodges, Secretary
E. V. John
W. R. Richard
E. P. Wheeler, Chairman

Objectives: (Agreed to by the Committee)

Submit recommendations for action which will:

1. Permit continued sales and profits of Aroclors and Terphenyls.
2. Permit continued development of uses and sales.
3. Protect image of Organic Division and of the Corporation.

Background Discussion of Problem:

1. Agreed that we should concentrate on Aroclor 1254 and 1260. Aroclor 1242 has not yet been incriminated for these possible reasons:
 - a. Nature of uses of 1242 minimizes environmental contamination.
 - b. It may degrade biologically.
 - c. Unless analytical techniques are performed carefully, 1242 can be destroyed by oxidation during the analyses.
2. PCB has been found in:
 - a. Fish, oysters, shrimp, birds.
 - b. Along coastlines of industrialized areas such as Great Britain, Sweden, Rhine River, low countries, Lake Michigan, Pensacola Bay, in Western wild life (eagles). It may be a global contaminant.
3. PCB has been tied to DDT in effects on disappearance of wild birds which have fish diets. Ratio of PCB to DDT has been about 40-50:1 generally. Dr. Reisboro reported almost 1:1 ratio. PCB may be contributing to or exaggerating the effects of other chlorinated aromatics.

MONS 030483



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4. Sample acceptance from the numerous researchers was discussed. This has been done on a limited basis. Our corroboration of testing of their samples adds to our knowledge and demonstrates a willingness by Monsanto to help define the problem, but it is expensive and also tightens any possible legal cases against us-- it rules out possibilities that Aroclors are not involved.

5. Toxicity levels:

Aroclors have been shown to be safe for man in reasonable exposure concentrations. We are testing 100 ppm in diet of rats and dogs on a rule-of-thumb basis that 1/100 of toxicity level is safe and 1 ppm is probably the upper limit in total diet.

"Allowable levels" are probably lower than DDT. The worst example to date is the test at Pensacola where 5 ppb was found to be toxic to shrimp in 18 days exposure.

One problem we are facing is to keep the "safe level" (?) for shrimp from being applied to e.g. Lake Michigan where more tolerant fish species probably exist. We need to show the safe level in shrimp, clams, oysters and several species of fish.

Many toxicity studies on PCB are underway and it was agreed to be desirable to keep contact with all laboratories which have requested Aroclor samples. ~~One-half to two-thirds of the sample requests have come~~ from state labs (who would let us know what they are doing) and about 1/3 have come from universities (who may give us the "brush-off"). Question of who should call on the laboratories was not resolved.

6. Escambia River Problem:

For a clearer understanding of the general problem, the situation at Pensacola was reviewed. From a relatively negligible discharge of 1-3 gal/day into a large river, 1/4 mile downstream levels of 42 ppb in water and 476 ppm in mud were found. Although use of Aroclor was halted immediately, we can expect the water contamination to continue for a lengthy period by leaching from the contaminated mud. No downstream samples have yet been taken to measure the decrease in contamination (as of 9/5/69).

MONS 030484

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7. Problem in Producing Plants:

P. Hodges reviewed what was being done to stop gross losses at Anniston and at WQK. Basically, the work to date consists of stopping or trapping any sewerage of free Aroclor with return to process or land fill disposal of the trapped Aroclor. This will reduce levels in plant effluents to below solubility ranges, particularly as we move to install traps (or sumps) back into the waste source points where flows are small and as yet undiluted by Aroclor-free waste streams. The question of exactly how far to reduce (how much money to spend) is not yet clear and expenditures to date have been comparatively small. It was agreed that, until the problems of gross environmental contamination by our customers have been alleviated, there is little object in going to expensive extremes in limiting discharges from the plants.

One problem that has been interfering with logical development of our plant Aroclor waste reduction programs has been delays in obtaining analytical results from in-plant and ex-plant sampling. It was agreed that additional help was necessary in Dr. Tucker's lab but no specific actions were proposed. In addition to in-plant work, the plants are sampling the receiving streams.

Air pollution reduction has not been considered by the plants to date except as incidental prevention of product contamination during tank car and drum loading operations. Long range (1-2 year) improvements at Anniston are planned to reduce product contamination (and air emissions) in car loading operations. It was agreed that a comprehensive air sampling and testing program would be very expensive and is probably not justified at this stage of the problem.

8. Environmental Contamination by Customers:

Our in-plant problems are very small vs. problems of dealing with environmental contamination by customers. In one application alone (highway paints), one million lbs/year are used. Through abrasion and leaching we can assume that nearly all of this Aroclor winds up in the environment.

Because the rate of natural (bio-degradation) is very low, other degradation must destroy PCB equal to the rate of environmental exposure in order to avoid build-up of contamination.

A general discussion was held on philosophy of controlling sales or working with customers to prevent pollution by PCB.

MONS 030485

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Action Planned:

Each member of the group will submit to the other members for consideration possible ideas and programs to help accomplish the overall objectives set by the Committee. Following review of the suggestions, the Committee will meet again at an early date to be arranged by the Chairman.

P. B. Hodges
Secretary

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HONS 030486

EXHIBIT K

(DSW 014612-014624)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

CONFIDENTIAL

Date: October 2, 1969

Subject: REPORT OF AROCLOR "AD HOC" COMMITTEE

To: Howard S. Bergen, Jr.
James E. Springate

From: M. N. Farrar
P. B. Hodges, Secretary
E. V. John
W. R. Richard
E. P. Wheeler, Chairman

DSW 014612

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Summary of the Problem

1. Objectives	Page 1
2. Probability of Success	Page 2
3. Recommendations	Page 3-4
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5. General Background	Page

on August 25,

OBJECTIVES

At a meeting of business group directors of Function Fluids and Plasticizers with Organic Division and Corporate Staff members, an "ad hoc" committee was appointed to prepare a resume of the situation concerning the environmental contamination through the manufacture and use of polychlorinated biphenyls (Aroclors).

The objective of the committee was to ~~prepare~~ recommended actions that will:

1. Protect continued sales and profits of Aroclors;
2. Permit continued development of new uses and sales, and
3. Protect the image of the Organic Division and the Corporation as members of the business community recognizing their responsibilities to prevent and/or control contamination of the global ecosystem.

-2-

PROBABILITY OF SUCCESS

The committee believes there is little probability ~~(to be)~~ that any action that can be taken will prevent the growing incrimination of specific polychlorinated biphenyls (the higher chlorinated--e.g. Aroclors 1254 and 1260) as nearly global environmental contaminants leading to contamination of human food (particularly fish), the killing of some marine species (shrimp), and the possible extinction of several species of fish eating birds.

Secondly, the committee believes that there is ~~no possible~~ ^{practical} ~~the~~ course of action that can so effectively police the uses of these products as to prevent ^{completely some} environmental contamination.

There are, however, ^{in order} a number of ~~possible~~ actions which must be undertaken ^{in order} to prolong the manufacture, sale and use of these particular Aroclors as well as to protect the continued use of other members of the Aroclor series.

The ultimate that can be expected is ^(Less than 5 chlorines) the continued use of the lower chlorinated biphenyls and the chlorinated terphenyls in applications amenable to such control that there is practically zero losses to the environment. In the interim we would hope to establish by appropriate research efforts "tolerance" or safe levels for particular Aroclors in the environment.

- The identification is ~~positive~~ ^{positive}
- Toxicity towards certain species is high.
- Persistence is high. —
- Likely hood of natural origin or degradation is remote. —

DSW 014615

RECOMMENDATIONS

- OK 1. In view of legal and moral considerations, notify all Aroclor 1254 and 1260 customers of environmental contamination problem. + *advising customers.*
3. ~~2~~ Consult with appropriate federal agencies' headquarters in Washington to determine current status of concern and to inform appropriate individuals therein of Monsanto's research and control efforts.
4. ~~3~~ Personally contact all governmental and university laboratories which have requested Aroclor samples and indicated interest in the environmental contamination problem.
2. ~~4~~ Reduce losses of Aroclors in liquid wastes from Monsanto plants to ~~absolute~~ minimum. Goal ~~0~~ to *25 ppb* *For 1254 & 1260*
~~10 parts per million.~~
5. Determine extent of atmospheric losses from Aroclors from Anniston and WVK Plants and develop plans for control.
6. Analyze in Organic Division laboratories (or by contract) selected appropriate samples from:
 - a. Environment of Anniston and WVK Plants.
 - b. Monsanto products where contamination is possible.
 - c. Agencies and/or laboratories attempting to pinpoint specific sources of contamination.
 - d. Customer plants' environments.
 - e. Research efforts involved in biological studies--i.e. animal, bird and fish toxicity studies and biodegradation studies.
7. Expand analytical capabilities in conjunction with items 5. and 6. above.

RECOMMENDATIONS (Continued)

8. Assign one individual from the division full-time for three to six months to coordinate division and Corporate Staff department efforts.
9. Establish special budgetary account to allow implementation of these recommendations and the continuation of the toxicological research effort now underway and continuing until June, 1971.

~~_____~~

BASIS FOR RECOMMENDATIONS

1. Notification of All Customers

Feb. On September 24, 1969 the San Francisco Chronicle published a "scare" story following an interview with Dr. Robert Risebrough of the University of California. The latter had recently published in Nature the finding of polychlorinated biphenyls in fish, birds and eggs in the California coastal areas.

On March 3, 1969, the Functional Fluids group sent a letter to the 31 major Aroclor customers in the transformer and capacitor applications. The letter included a copy of the Chronicle story and a Monsanto statement concerning the situation. This was intended to announce to these customers that the polychlorinated biphenyls might be in trouble and implied that the customers should make every effort to prevent loss of these materials to the environment. There has been subsequently some follow-up with at least General Electric and Westinghouse.

It has been recognized from the beginning that other functional fluid uses could lead to losses of the Aroclors to liquid waste streams from the customers' plants. Losses could occur from spills, unusual leakage of large volumes and daily losses of smaller volumes.

It has also been recognized that there could be vapor losses but it has been felt that these were perhaps of less significance than the vapor losses in plasticizer applications. The concern for vapor losses rises from the published proposed theory that even minute quantities of vapors are eventually transferred to the water environment and accumulated therein.

Another possible source of air environmental contamination is the eventual destruction of materials which have Aroclors in them. Of particular significance might be the burning or partial incineration of waste or used products containing the Aroclors.

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BASIS FOR RECOMMENDATIONS (Continued)

As the alarm concerning the contamination of the environment grows it is almost certain that a number of our customers or their products will be incriminated. The company could be considered derelict, morally if not legally, if it fails to notify all customers of the potential implication.

sept. A case in point is the recent determination (mid-~~August~~) that milk to be marketed by the Maryland Cooperative Milk Producers, Inc. in Baltimore was contaminated with polychlorinated biphenyls. The source of the PCB's was isolated to six dairy herds in Martinsburg, West Virginia. Investigation by the Producers Association is continuing but to our knowledge the specific source of the PCB has not been pin-pointed.

When the Aroclors were indicted as causing poisoning in cattle in the mid-1950's, chlorinated naphthalenes were eventually identified as the causative agent. The naphthalenes were used in greases or lubricants for cattle feed machinery and had contaminated the animal food. (Members of the Medical Department have been told that the Texas company "bought" 6,000 head of cattle around the country as a result of this incident. It is not known whether or not the suppliers of the naphthalenes to Texaco were brought into the settlement.) Are our customers selling grease or lubricants containing Aroclors that are now responsible for the milk contamination?

In the plasticizer use area, the Aroclors may be used in rubber based paints or surface coatings. The uses for these surface coatings include the interior walls of potable water supply storage tanks in some communities. In Europe we have been told that similar paints are widely used for swimming pools. In spite of the low degree of solubility of the PCB's in water, there are sentiments among the European scientists (and our PCB competitive manufacturers) that such uses may be sources of pollution.

Other customer applications or uses which could be suspect include highway marking paints, and any of the oil and/or grease lubricant applications,

caulking compounds - sealants,

DSW 014619

BASIS FOR RECOMMENDATIONS (Continued)2. Consultation with Federal Agencies

In August of 1968 when the current effort related to this problem got underway, the scientists at the U. S. Department of Interior, Fish and Wildlife Laboratories at Patuxent, Maryland were visited. In the six to twelve months that the laboratory had been looking for PCB residues, they had identified such compounds in dead eagles as well as marine birds. At that time they did not report positive findings in fish, shell fish or other marine organisms. We know that their efforts have been continuing at an accelerated rate but the laboratory has not been revisited to learn of current developments.

The U. S. Food and Drug Administration in Washington called Dr. Kelly in June to report that the State of Georgia had found PCB's in milk (we had in April supplied samples of our Aroclors to the Georgia State Department of Agriculture Laboratories in Atlanta).

The analyses of milk from the Maryland co-op mentioned in 1. above were performed by an FDA laboratory.

On Friday, September 26, we were asked to send samples to the Atlanta Toxicological Branch of the FDA and to the Residue Chemical Branch Division of Pesticides, FDA in Washington. The stated reason for the request was for these laboratories to determine the "acute toxicity" of Aroclors 1254 and 1260.

In the past year we have had request for samples from five or six of the regional laboratories of the Federal Water Pollution Control Administration-- an agency within the U. S. Department of Interior. We have not had an opportunity to follow-up with these laboratories as to their interest or concern.

In August a laboratory of the Bureau of Commercial Fisheries, Department of Interior, at Pensacola, Florida, reported finding PCB's in the river below our Pensacola Plant. Subsequently, they reported that 5 parts per billion of Aroclor 1254 killed baby shrimp in 18 days. There has been no follow-up by St. Louis based personnel since our Pensacola Plant discontinued the use of Pydraul AC.

BASIS FOR RECOMMENDATIONS (Continued)

Appropriate individuals in the parent federal agencies should be visited to determine their current activities and concern and, secondly to make these agencies aware of Monsanto's interest, research and control efforts.

3. Contact with other Governmental and University Laboratories

In addition to the above, Monsanto has provided samples of the Aroclors to 30 or 40 other governmental and university laboratories or scientists. It would be prudent and appropriate for someone from Monsanto to personally follow-up the supplying of the samples and determine the status of the efforts of these groups. For example, the State Department of Agriculture Laboratory in Hartford, Connecticut reported in July that they had found PCB in fish off the coast of Connecticut. This led to two articles in the Hartford Times and a five minute radio program through a syndicated outlet of 108 radio stations.

4. Losses from Monsanto Plants

Efforts to reduce the losses of Aroclors in liquid wastes from the Anniston and WGX Plants are completed or underway. It is impossible to establish a limit as to what can be discharged "safely". Investigation has shown that the waters in receiving streams below the Anniston Plant contain significant (parts per million) concentrations of PCB. More ominous perhaps is the fact that sediment in the bottom of these streams miles below our plants may contain up to 2% Aroclor.

To prepare for the eventual publication in the press of the discharge of PCB's in Alabama and to the Mississippi River, a significant effort must be made to determine the present levels of contamination and more importantly, determine the levels of contamination as "clean up" procedures begin to show an effect.

The incident at the Monsanto Plant at Pensacola indicates that all Monsanto Plants using Aroclors should be made aware of the potential problem and efforts made to eliminate any losses. The significance of "any losses" may be related to the one to three gallons per day which was being lost at the Pensacola Plant.

BASIS FOR RECOMMENDATIONS (Continued)

Hopefully research efforts will indicate that a "safe level" of losses would be higher in fresh water streams not adjacent to coastal estuaries. At the present time we know of no claims that the PCB's are "destroying" fish.

5. Atmospheric Losses at Anniston and WGK

The determination of atmospheric losses for our Aroclor manufacturing plants will be more tedious and time consuming than in the case of liquid wastes. We will never be prepared to discuss intelligently potential problems of our customers where there may be atmospheric losses until we have some data on our own plants. This is particularly true if we ever expect to recommend to our customers measures for control of atmospheric losses.

6. Analytical Capabilities (a. through e. inclusive)

In each of the recommendations 2. through 5. above, there is the implication that Monsanto's best interest could be served by appropriate sampling and analysis. In connection with any of the governmental and other laboratories, we must accept their reported analytical results or in specific instances offer to run duplicate analyses to confirm for ourselves the validity of the reported results.

The committee agrees that to perform analyses that would confirm all of the reported findings represents an unreasonable cost in terms of personnel and facilities. At the same time there appears to be no alternative to the acceptance in the last three months that confirmation analysis in selected cases should be done. This has led to an accumulation of a backlog of samples which need attention. Delays in analysis are occurring because of shifting priorities for samples as they are received or as they have been retained.

A case in point is the delay in analyzing thirteen samples from the Inorganic Division. Samples were submitted following the finding that five of five commercially available electric dishwashing compounds analyzed showed the presence of PCB's. The Inorganic Division can not exonerate the products it sells to the detergent manufacturers until it has some data showing whether or not Monsanto supplied materials are contaminated. In the meantime Inorganic Division Quality Control has

BASIS FOR RECOMMENDATIONS (Continued)

suggested to its Division Engineering that future designs for making detergent components insure that the use of Aroclors will not permit contamination. Secondly, it is obvious that the Division cannot approach its detergent manufacturing customers about their potential problem until the above data indicate that "our own skirts are clean".

This week it was agreed that milk and water samples from the Maryland co-op in Baltimore should take precedence over other samples which had been scheduled.

In summary, the committee believes there will be a growing number of samples from the following:

- a. Environment of Anniston and WOK Plants.
- b. Monsanto products where contamination is possible.
- c. Agencies and/or laboratories attempting to pin-point specific sources of contamination.
- d. Customer plants' environment.
- e. Research efforts involved in biological studies--i.e. animal, bird and fish toxicity studies and biodegradation studies.

7. Expansion of Analytical Capabilities

The recommendation to expand the analytical capabilities is a necessity in view of the preceding recommendations.

8. Assignment of Full-Time Effort

Up to this time the coordination of the Division effort has been principally the responsibility of W. R. Richard and E. P. Wheeler with support from R. E. Keller and Cumming Paton. Each of these individuals has other responsibilities to the extent that, although the Aroclor problem may have been a predominant issue, other areas of interest could not be slighted.

The committee believes that the problem is of sufficient seriousness to warrant the full concentration of at least one individual for the next three to six months. Those who have been involved up to this point would obviously continue in their

BASIS FOR RECOMMENDATION (Continued)

supporting efforts where the individual's background or expertise would make it appropriate. For example in connection with the follow-up with the federal agencies in Washington, Dr. Kelly would expect to be present for any contact with USFDA officials.

Other members of the Medical Department would be made available for contacts with the pollution control agencies or those laboratories or universities where toxicity appears to be of interest or concern.

Certainly Dr. Keller and Scott Tucker should accompany anyone making visits where the specific question of analytical techniques was to be discussed.

This still leaves a number of man months to be devoted to the other laboratories or agencies which have up to this point not made their specific interest known.

Equally if not more important is the effort which must be made relating to the contacts with customers. The committee does not believe that this can be handled by district marketing representatives without supplying such "local" individuals with a complete background of the problem.

9. Budgetary Considerations

The committee recognizes the restrictions placed on those currently involved by mandates to operate within normal or proposed reduced budgets. It should be clear, however, that the product groups, the Division and the Corporation are faced with an extraordinary situation. There can not be too much emphasis given to the threat of curtailment or outright discontinuance of the manufacture and sales of this very profitable series of compounds. If the products, the Division and the Corporation are to be adequately protected, adequate funding is necessary.

EXHIBIT L

(MONS 100123-100124)

to

PLAINTIFFS' ORIGINAL COMPLAINT

*TOWN OF WESTPORT and WESTPORT COMMUNITY SCHOOLS,
Plaintiffs*

v.

*MONSANTO COMPANY, SOLUTIA INC. and
PHARMACIA CORPORATION, Defendants*

Filed in the United States District Court,
District of Massachusetts, on
May 7, 2014

Monsanto

TO (NAME & LOCATION)	N. T. Johnson St. Louis	
DATE	February 16, 1970	cc:
SUBJECT		P. J. A. Marsh - Brussels
REFERENCE	POLLUTION LETTER	R. Enhardt - New York
TO		T. W. Oneson - Montreal
	P. Craska - Wilmington	J. N. Haggart - Brussels
	C. Clay - St. Louis	V. Morse - St. Louis
	J. H. Davidson - Los Angeles	J. Brydon - Montreal
	R. A. Damiani - Chicago	R. Graham - New York
	G. F. Fague - Detroit	P. G. Benignus
	R. A. Garcia - Akron	J. G. Bryant
	R. Garnsworthy - Melbourne	D. E. Roush
	J. A. Heilala - Akron	<u>J. R. Fallon</u>
	R. Irwin - Houston	D. A. Hall
	J. S. Pullman - New York	D. R. Pogue
	J. J. Roder - Chicago	D. F. Smith
	R. Giles - Melbourne	D. A. Olson

Attached is a list of questions and answers which may be asked of you by customers receiving our Aroclor-PCB letter. You can give verbal answers; no answers should be given in writing. If the customer asks a question you can't answer or if he wants an answer in writing, then send his questions to me and we will answer from here.

We want to avoid any situation where a customer wants to return fluid. The new reformulated products will be available within a month. We would prefer that the customer use up his current inventory and purchase Pydraul 625A, Pydraul ACA, Pydraul ACA Winter Grade and Pydraul 540A when available. He will then top off with the new fluid and eventually all Aroclor 1254 and Aroclor 1260 will be out of his system. We don't want to take fluid back. Sell him the replacement.

We must be very positive in our approach with each customer relative to our decision to eliminate the use of Aroclor 1254 and Aroclor 1260 in our Pydraul products. We (your customer and Monsanto) are not interested in using a product which may present a problem to our environment. We certainly have no reason to be defensive or apologetic about making this change. The decision to change makes good sense and our customers should commend us, not criticize our actions. No one has forced us to make this



change. We have done it to keep our customers out of possible trouble. They should appreciate our effort, and stay with us as a customer on the reformulated Pydrauls. To make this change has cost us research monies and time. Fortunately, we possess the technical skills to make a change in our formulations without affecting the performance of products. Be positive, Take the offense. Don't let a customer or competitor intimidate you. I doubt if our competitors know whether their product could present a problem to our environment. You might ask your customer, if he has ever asked Houghton or Stauffer, Carbine, etc. about the effects of their products.

We should also recognize (point this out to your customer) we must clean-up. The Chemical Week article gives him an idea of laws in effect in his state. Read this yourself. Be familiar with the data on each state in which your customers are located. Use this in your discussions.

We have no replacement products for Aroclor 1254 and Aroclor 1260. We will continue to make these products; however, customers will have to use their own judgement on continued use.

We can't afford to lose one dollar of business. Our attitude in discussing this subject with our customer will be the deciding factor in our success or failure in retaining all our present business. Good luck.

(We have also attached a copy of the letter sent to transformer customers.)

N. T. Johnson

lb

MONS 100124

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Town of Westport and Westport Community Schools
(b) County of Residence of First Listed Plaintiff Bristol County, MA
(c) Attorneys (Firm Name, Address, and Telephone Number)
Richard M. Sandman, Esq. (see attachment)
Rodman, Rodman & Sandman, P.C., 442 Main Street, Suite 300,
Malden, MA 02148-5122 (781) 322-3720

DEFENDANTS
Monsanto Company, Solutia Inc. and Pharmacia Corporation
County of Residence of First Listed Defendant St. Louis City, MO
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State X 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 X 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 :1332pd
Brief description of cause:
Property damage due to PCB contamination

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 90,000,000.00
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes 0 No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE Denise J. Casper DOCKET NUMBER 1:12-cv-11645

DATE 05/07/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Richard M. Sandman

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Attachment to
CIVIL COVER SHEET

I. (c) Attorneys (continued)

Scott Summy, Esq.
Baron & Budd, P.C.
The Centrum Building
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219
(866) 844-4556

Robert J. Gordon, Esq.
Weitz & Luxenberg, P.C.
700 Broadway
New York, NY 10003
(212) 558-5500

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Town of Westport v. Monsanto Company

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

1:12-cv-11645-DJC TOWN OF LEXINGTON, on behalf of itself and all others similarly situated v. PHARMACIA CORPORATION, et al.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Richard M. Sandman

ADDRESS Rodman, Rodman & Sandman, P.C., 442 Main Street, Suite 300, Malden, MA 02148-5122

TELEPHONE NO. (781)322-3720