UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

SACHA SMITH and KENNY SMITH, Plaintiff	)	
v.	)	Case No. 2:24-cv-74
MONSANTO COMPANY, SOLUTIA, INC., PHARMACIA, L.L.C., PHARMACIA, INC., and PHARMACIA CORP., Defendants	)	

COMPLAINT

1. Plaintiffs, Sacha Smith ("Sacha") and Kenny Smith ("Smith"), a married couple, bring this complaint against Defendants Monsanto Company, Solutia, Inc., Pharmacia L.L.C., Pharmacia, Inc., and Pharmacia Corporation (together, "Defendants"), and allege on personal knowledge, investigation of their counsel, and information and belief as follows:

Nature of the Action

2. Plaintiff Sacha Smith attended Burlington High School ("BHS") in Burlington, Vermont from 1990 to 1994. While attending BHS as a student, Sacha Smith was exposed to toxic Polychlorinated Biphenyls ("PCBs") and suffered adverse medical consequences, including, but not limited to, kidney cancer, breast cancer, fibroid tumor in her uterus, thyroid issues, reproductive issues, personal injuries, and emotional distress.

3. Human exposure to PCB is known to cause a myriad of medical complications including, but not limited to, skin conditions such as acne and rashes, neurological disorders, to changes in liver and blood urine resulting in liver damage, kidney damage, alternation of thyroid and reproductive systems, blood disorders, and cancer.

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4. In 2020, the Burlington School District was forced to permanently close BHS after testing revealed dangerous PCB levels. Testing determined that toxic PCBs leached mainly from window calk into the building materials, the ground, and into the air making renovation financially infeasible. On March 24, 2021, a temporary high school opened in a converted Macy's department store located at 67 Cherry Street, Burlington, Vermont. Students still attend high school there.

5. In the Spring of 2023, demolition of BHS began and is ongoing. The Burlington School District hopes to have a new high school built and ready for students by 2026.

6. Monsanto successfully monopolized commercial PCB manufacturing in approximately 1929, and manufactured commercial PCBs, including PCBs used in window calk and electrical equipment in school facilities and buildings, through the 1930s, 1940s, 1950s, 1960s, until the late 1970s when the EPA banned this dangerous chemical. PCBs remain banned worldwide.

7. Throughout this timeframe, Monsanto produced approximately 1.25 billion pounds of PCBs and caused severe indoor and outdoor environmental pollution across the United States, including at BHS.

8. Monsanto knew early on that PCBs were highly toxic and violated their duty of care to the public by hiding and downplaying the toxic nature of PCBs for decades to protect their profits.

9. Monsanto's greed and deliberate desire to profit from toxic PCBs, regardless of the costs to the environment, and the public as a whole, directly and proximately caused Sacha's severe PCB related injuries and they are entitled to compensation.

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Parties

10. Sacha and her husband Kenny are citizens of Franklin County, Vermont. Plaintiff Sacha attended Burlington High School ("BHS") in Burlington, Vermont, from 1990-1994.

11. Defendant Monsanto Company ("Monsanto") is a Delaware corporation with its principal place of business in Missouri. Monsanto is registered to do business in Vermont and can be served via its registered agent, Corporation Service Company. The original Monsanto Company, prior to the formation of its Solutia and Pharmacia entities, used to operate primarily in three business areas, agriculture, chemicals, and pharmaceuticals. Today, Monsanto continues to operate its agriculture branch, while Solutia operates the original Monsanto chemical branch, and Pharmacia operates the original Monsanto pharmaceutical branch. Throughout its corporate history, Monsanto has entered into agreements, consolidated assets, merged, sold parts of its business, and engaged in a myriad of other transactions with Solutia, Pharmacia, and others to reduce or hide from PCB-related liabilities. Monsanto knows that the Defendants herein, including itself, have failed to take action to abate, remediate, minimize, publicize, or protect teachers and children in school facilities, including BHS, in the United States that contain PCBs.

12. Defendant Solutia, Inc. ("Solutia") is a Delaware corporation with its principal place of business in Missouri. Defendant Solutia is registered to do business in Vermont and can be served via its registered agent United Agent Group Inc.

13. Defendant Pharmacia L.L.C. ("Pharmacia LLC") is formerly known as Pharmacia Corporation and is related to Monsanto. Pharmacia L.L.C. is a Delaware limited liability corporation and is a citizen of the states of New York and Delaware. Pharmacia L.L.C. is now a wholly owned subsidiary of Pfizer, Inc. Pharmacia L.L.C. is registered to do business in Vermont and can be served via its managing agent.

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14. Defendant Pharmacia Inc. is a foreign corporation with its principal place of business in New Jersey and can be served by the managing agent.

15. Defendant Pharmacia Corporation is a foreign corporation with its principal place of business in New Jersey and can be served by the managing agent.

16. Defendants Monsanto, Solutia, and Pharmacia LLC entered into complex corporate transactions and agreements that determine their respective legal and financial obligations, responsibilities, and liabilities related to original Monsanto's manufacture or sale of PCBs.

17. Upon information and belief, Solutia agreed to indemnify Monsanto and or Pharmacia LLC for certain liabilities related to original Monsanto's chemical business. Through a multitude of agreements, Monsanto, Solutia, and Pharmacia LLC share or apportion liabilities, and/or indemnify one or more entities, for claims arising from original Monsanto's chemical business, including the manufacture and sale of PCBs. Defendants' insurers are aware and participated in this process.

18. 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 LLC, and 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. Monsanto, Solutia, and Pharmacia are jointly and or severally liable under state tort law for contaminating BHS with toxic PCBs and poisoning Sacha during her four years of attending BHS. These Defendants may be obligated to one another in contract for PCB tort liabilities as set out in their complex corporate agreements.

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Jurisdiction and Venue

19. The causes of action complained of herein and most of the facts alleged herein occurred in this judicial district. Sacha was exposed to Defendants' PCBs in Chittenden County, Vermont.

20. Defendants committed tortious conduct and engaged in the unlawful activities herein alleged in Chittenden County, Vermont.

21. The tortious conduct, wrongful acts and omissions, and the resulting injury and damages suffered by Sacha also occurred in Chittenden County, Vermont.

22. The amount in controversy exceeds $75,000.00 exclusive of interest and costs.

23. The Court has subject matter jurisdiction pursuant to 28 U. S. C. § 1332 based on diversity of citizenship and amount in controversy.

24. Venue is appropriate in this district pursuant to 28 U. S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims is situated in this judicial district.

Background

A. Monsanto Monopolized The Production And Manufacture Of Pcbs From 1929 To 1977.

25. PCBs are mixtures of synthetic organic chemicals comprised of chlorine atoms attached to a double-hydrogen ring (a "biphenyl" ring). PCBs have no taste or smell and range in consistency from an oil to a waxy solid.

26. PCBs are comprised of many similar semi-volatile chemicals called congeners. A "PCB congener" is any single, unique chemical compound in the PCB category. Over 200 congeners have been identified. *See* America's Children and the Environment, Third Edition, U.S. Environmental Protection Agency (2013).

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27. From approximately 1929 to 1977, Monsanto was the only manufacturer of PCBs in the United States for commercial use.

28. The most common trade name for PCBs in the United States is "Aroclor." 21 CFR § 500.45(a) ("Polychlorinated biphenyls (PCBs) represent a class of toxic industrial chemicals manufactured and sold under a variety of trade names, including Aroclor (United States)"). Aroclor is a name that was trademarked by Monsanto.

29. "Between 1929 and 1977, more than 1.25 billion pounds of PCBs were produced in the United States." Agency for Toxic Substances and Disease Registry ("ATSDR") 2014. Case Studies in Environmental Medicine: Polychlorinated Biphenyls (PCBs) Toxicity, U.S. Dep't Health & Human Services, at 21.

30. "PCBs are extremely toxic to humans and wildlife." *Environmental Defense Fund v. Environmental Protection Agency*, 636 F.2d 1276, 1270 (D. C. Cir. 1980).

31. PCBs are a "keystone pollutant" and "a prime motivator for the enactment of the TSCA," the Toxic Substances Control Act. "By most accounts, PCBs are the archetypical chemical villains against which the contemporary pollution laws are directed." Rodgers & Burleson, *Polychlorinated biphenyls* (PCBs), 3 Envtl. L. (West) §6:9 (July 2017).

32. By the late 1970s, the United States banned the "manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs)." 44 Fed. Reg. 31514 (May 31, 1979). This ban remains in effect today.

33. PCBs are among "the most stable chemicals known and decompose very slowly once they are in the environment . . . In the environment, PCBs are toxic at low level concentrations to a wide variety of species, marine mammals included. Once PCBs reach the environment, they tend to stay there, or move slowly in damaging cycles . . ." Rodgers &

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Burleson, citing in part Response to Exemption Petitions, 50 Fed. Reg. 35, 184 (August 29, 1985) (PCBs are also toxic to mammals at very low exposure levels. The survival and reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature"); 21 CFR § 500. 45(a) ("Since PCBs are toxic chemicals, the PCB contamination of food as a result of these and other incidents represent a hazard to public health.").

B. PCBs Are Extremely Toxic To Humans, Animals, And The Environment.

34. "For humans, exposure can cause acute effects such as skin rashes, vomiting, abdominal pain, and temporary blindness and are suspected of causing birth defects, miscarriages, and cancer." Rodgers & Burleson. *See also Solutia, Inc. v. McWane, Inc.*, 726 F. Supp. 2d 1316, 1319 (N. D. Ala. 2010) ("PCBs have been found to cause cancer, decreased fertility, still births, and birth defects in test animals.") (Monsanto cleanup contribution case); *Dickerson, Inc. v. United States*, 875 F.2d 1577, 1579, 1583 (11th Cir. 1989) ("PCBs are highly toxic chemicals frequently used in electrical transformers . . . Scientists have found PCB concentrations far below those involved in this case to cause cancer, decreased fertility, still births, and birth defects in test animals.").

35. The *Environmental Defense Fund* decision summarized research available to the scientific community by the late 1970s:

> Polychlorinated biphenyls (PCBs) have been manufactured and used commercially for fifty years for their chemical stability, fire resistance, and electrical resistance properties. They are frequently used in electrical transformers and capacitors.
>
> However, PCBs are extremely toxic to humans and wildlife. The extent of their toxicity is made clear in the EPA Support Document accompanying the final regulations, in which the EPA Office of Toxic Substances identified several adverse effects resulting from human and wildlife exposure to PCBs.

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Epidemiological data and experiments on laboratory animals indicate that exposure to PCBs poses carcinogenic and other risks to humans. Experimental animals developed tumors after eating diets that included concentrations of PCBs as low as 100 parts per million (ppm). Experiments on monkeys indicate that diets with PCB concentrations of less than ten ppm reduce fertility and cause still births and birth defects. Other data show that PCBs may adversely affect enzyme production, thereby interfering with the treatment of diseases in humans. Support Document, supra note 4. At 9-18.

EPA has found that PCBs will adversely affect wildlife as well as humans. Concentrations below one ppb (part per billion) are believed to impair reproductivity of aquatic invertebrates and fish. Some birds suffered "severe reproductive failure" when fed diets containing concentrations of only ten ppm of PCBs. Id. at 19. Because PCBs collect in waterways and bioaccumulate in fish, fish-eating mammals run a special risk of adverse effects. Such mammals may have "significantly higher concentrations of PCBs in their tissues than the aquatic forms they feed on."/rf. at 36.

EPA estimates that by 1975 up to 400 million pounds of PCBs had entered the environment. Approximately twenty-five to thirty percent of this amount is considered "free," meaning that it is a direct source of contamination for wildlife and humans. The rest, "mostly in the form of industrial waste and discarded end use products, is believed to be in landfill sites and thus constitutes a potential source of new free PCBs." Id. at 33-34. Other significant sources of PCBs include atmospheric fallout and spills associated with the use or transportation of PCBs. Id, at 29.

EPA concluded in the Support Document that "the additional release of PCBs" into the environment would result in widespread distribution of the PCBs and "will eventually expose large populations of wildlife and man to PCBs." Id. at 36-37 EPA concluded further that:

> As a practical matter, it is not possible to determine a "safe" level of exposure to these chemicals. Because PCBs are already widely distributed throughout the biosphere, they currently pose a significant risk to the health of man as well as that of numerous other living things. As a consequence, any further increase in levels of PCBs in the biosphere is deemed undesirable by EPA.

Id. at 38. Because "PCBs released anywhere into the environment will eventually enter the biosphere ... EPA has determined that any such release of PCBs must be considered 'significant.'" *Id.*

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> In 1972, Monsanto, the major American manufacturer of PCBs, limited its sales of PCBs to manufacturers of transformers and capacitors. It ceased all manufacture of PCBs in 1977 and shipped the last of its inventory before the end of that year. Today, PCBs are produced in this country only as incidental byproducts of industrial chemical processes. There are no known natural sources of PCBs. *Id.* at 2.

Environmental Defense Fund, 636 F.2d at 1270-71.

36. Most importantly, EPA expressly found that any exposure of PCBs to the environment or humans could cause adverse effects." *Environmental Defense Fund*, 636 F.2d at 1283-84

37. In the years following the ban, the EPA confirmed that PCBs are toxic, may cause reproductive and developmental effects, and may cause tumors ("oncogenic potential") in people exposed:

> *Health Effects*. EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.
>
> Available animal studies indicate an oncogenic potential, the degree to which would depend on exposure... Further epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.
>
> In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmental toxic effects. Postnatal effects have been demonstrated in immature animals following exposure to PCBs prenatally and via breast milk.
>
> In some cases, chloracne may occur in humans exposed to PCBs. Severe cases of chloracne are painful and disfiguring, and symptoms may persist for an extended time...

50 Fed. Reg. 35182, 35183-84 (August 29, 1985).

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38. The EPA also determined that PCBs are probable human carcinogens. In 1996, the EPA reassessed PCB carcinogenicity based on data related to Aroclors 1016, 1242, 1254, and 1260. The EPA's cancer reassessment was peer reviewed by experts on PCBs, including scientists from government, academia, and industry. U.S. EPA. PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures (1996). U. S. EPA, Office of Research and Development, National Center for Environmental Assessment, EPA/600/P-96/001F (1996).

39. This EPA report found that "[j]oint consideration of cancer studies and environmental processes leads to a conclusion that environmental PCB mixtures are highly likely to pose a risk for cancer to humans." *Id.* at 57. In addition, "PCBs persist in the body, providing a continuing source of internal exposure after external exposure stops. There may be greater-than-proportional effects from less-than-lifetime exposure, especially for persistent mixtures and for early-life exposure." *Id.* at 58-59.

40. The 1996 EPA report also noted that "PCBs also have significant ecological and human health effects other than cancer, including neurotoxicity, reproductive and developmental toxicity, immune system suppression, liver damage, skin irritation, and endocrine disruption. Toxic effects have been observed from acute and chronic exposures to PCB mixtures with varying chlorine content." *Id.* at vi.

41. In 2000, the Agency for Toxic Substances and Disease Registry (ATSDR), issued a public health statement regarding PCB exposure. It noted that "[s]kin conditions, such as acne and rashes, may occur in people exposed to high level of PCBs... Some studies in workers suggest that exposure to PCBs may also cause irritation of the nose and lungs, gastrointestinal discomfort, changes in the blood and liver, and depression and fatigue." Agency for Toxic Substances and Disease Registry (ATSDR) 2000. Department of Health and Human Services,

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Public Health Service, at 4. The public health statement summarized experimental animal studies finding liver damage, anemia, acne-like skin conditions, stomach injuries, thyroid injuries, kidney damage, impaired immune system function, behavioral alterations, endocrine disruption, and impaired reproduction. *Id.* at 5.

42. PCB exposure poses higher risks for children and women. The 2000 ATSDR referenced studies which found consistent effects in PCB-exposed children: low birthweight, issues with motor skills, decreased short-term memory, and effects on the immune system. *Id.* at 6. The report highlighted that children are more vulnerable to PCB exposure than adults due to their smaller bodies and undeveloped brain, nervous, immune, endocrine, and reproductive systems. *Id.* Their lack of development makes PCB effects worse during the prenatal and neonatal periods. *Id.*

43. Workplace exposure to PCBs can contaminate homes. The ATSDR statement reiterated that workplace PCB exposure can result in the worker's home becoming contaminated as well: "If you are exposed to PCBs in the workplace, it may be possible to carry them home from work... If this is the case, you should shower and change clothing before leaving work, and your work clothes should be kept separate from other clothes and laundered separately." *Id.* at 7.

44. PCB exposure causes neurodegenerative diseases. The ATSDR 2011 addendum reported that exposure to PCBs is particularly harmful for women, including higher incident rates of amyotrophic lateral sclerosis (ALS, also known as motor neuron disease), Parkinson's disease, and dementia. *Id.* at 4.

45. PCB exposure results in neurobehavioral effects, such as learning deficits and anxiety. *Id.* at 5-6.

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46. Animal studies have shown that "commercial PCBs elicit a broad range of toxic responses, including acute lethality, body weight loss, carcinogenesis, dermal toxicity, fatty liver, genotoxicity, hepatomegaly, immunosuppressive effects, neurotoxicity, porphyria, reproductive and developmental toxicity, thymic atrophy, and thyroid hormone-level alterations." *Id.* at 39-40

47. PCBs cause reproductive and developmental effects. "Reproductive function may be disrupted by exposure to PCBs" and "neurobehavioral and development deficits have been reported in newborns exposed to PCBs in utero." *Id.* at 45. Children born to women exposed to PCBs exhibited statistically significant decreased in gestational age, birth weight, and head circumference. *Id.* at 43. Higher levels of exposure to PCBs correlated with weaker reflexes, greater motor immaturity, and more pronounced startle responses. *Id*. at 43-44. As children exposed to PCBs age, they continue to have deficits in weight gain, slowed responsiveness, lower performance on visual recognition memory tests, lower IQs, lower reading comprehension, and lower attention spans. *Id*. at 44. Further, PCB exposure has been linked to reproductive effects in sperm shape and production and menstruation disruptions, resulting in difficulty or inability to conceive.

48. PCB exposure causes endocrine and neurological adverse effects. "The epidemiological studies suggest a link between exposure to PCBs and thyroid hormone toxicity in humans." *Id.* at 46. Adults exposed to PCBs have been shown to have significantly greater motor retardation; poorer results on certain memory and attention tests; and higher scores on standardized confusion scale than did control adults. *Id.* at 51.

49. The Department of Health and Human Services and the Environmental Protection Agency "consider PCBs a probable human carcinogen." *Id.* at 51. In addition, and "on the basis of sufficient evidence of carcinogenicity in humans and experimental animals, the IARC

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[International Agency for Research on Cancer] classified PCBs are carcinogenic to humans." *Id.* PCB exposure has been linked to cancers of the liver, gallbladder, biliary tract, brain, stomach, intestinal, thyroid, myeloma (cancer of plasma cells, which can damage bones, immune system, kidneys, and red blood cell count), non-Hodgkin lymphoma, and the skin, such as malignant melanomas. *Id.* at 48-50. In addition, "data from animal studies have shown that PCBs cause gastrointestinal tract tumors, hepatocarcinomas, leukemia, lymphomas, and pituitary tumors." *Id.* at 50.

C. Monsanto Did Not Act As A Reasonable Chemical Manufacturer And Grossly Violated The Applicable Standard Of Care.

50. As the Industrial Hygiene Foundation of America put it in 1942: "Every new chemical or product should be investigated as to its toxicity before it is prepared in large amounts and released to the public." To meet this standard, chemical companies typically performed two-year chronic toxicity tests evaluating effects of long-term exposure. The testing was part of being a "good industrial steward," and large producers of synthetic chemicals typically complied. Monsanto itself did the same—that is, except for PCBs.

51. Similarly, a statement of legal principles distributed by the Manufacturing Chemists' Association no later than July 1939 advised that "[t]he manufacturer . . . must know the qualities of his product and he cannot escape liability on the ground that he did not know it to be dangerous." Monsanto was a member of the Manufacturing Chemists' Association.

52. In its communication, Manufacturing Chemists' Association the warned: "The vital factor concerning toxic materials is to intelligently safeguard the public." It went on to advise that toxic materials may enter the body through inhalation of dust, mist, vapors or gases, through the skin or through the mouth and stomach. The specific materials considered toxic were listed. These included chlorinated hydrocarbons and noted that "some chlorinated aromatics are

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frequently the source of skin problems." The section on labeling addressed seriousness of the need for product labels to safeguard the public and advised that company salesmen, service men and others intelligently instruct users of the advantages of providing adequate ventilation and maintaining personal hygiene.

53. Monsanto violated its standard of care as a chemical manufacturer by completely ignoring and covering up the known toxic nature of PCBs causing a tragic national crisis consisting of poisoned school children, teachers, and staff, all to profit for decades from toxic PCBs.

D. Monsanto Knew About The Dangers Of Pcbs But Continued To Manufacture And Promote Them.

54. In the 1930s, Monsanto was well aware of scientific literature which established that inhalation of PCBs in industrial settings resulted in toxic systemic effects in humans. A 1937 Monsanto memorandum advised that "[e]xperimental 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 acneform skin emption." Markowitz & Rosner, Monsanto, PCBs, and the creation of a "worldwide ecological problem," Journal of Public Health Policy (2018).

55. In 1955, Monsanto's Medical Director, Dr. Emmet Kelly, summarized Monsanto's position on 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 any type of liver disease and gives history of Aroclor exposure. I am sure the juries would not pay a great deal of attention to MACs [maximum allowable concentrates]." *Id.* at 14.

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56. The same year Dr. Kelly assured U.S. Steel Corporation in 1955 that Old Monsanto had tested Pydraul (one of Monsanto's PCB Aroclor products) and found that "exposures to large quantities of Pydraul F-9 for short periods of time...will not cause any toxic effects on the worker." However, these were false claims as Dr. Kelly and Monsanto had not conducted any research on long-term toxicity.

57. In 1955, the Medical Department at the Aroclors Department in the Krummrich plant in St. Louis recommended that "the eating of lunches should not be allowed in this department." The reasoning was "Aroclor vapors and other process vapors could contaminate lunches unless they were properly protected." *Id.*

58. In addition, after noting that "the chance of contaminating hands and subsequently contaminating the food is a definite possibility," the Medical Department stated that:

> It has long been the opinion the of 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.

Garrett JT to Patrick HB, Krummrich Plant; "Department 246 (Aroclors)" (Nov 14, 1955).

59. A 1957 internal memorandum by Monsanto Medical Director reported that, after conducting its own tests, which revealed that "skin application [of PCBs/Pydraul 150] caused death in all of the rabbits tested", and that "submarine crews have had to wear rubber suits and dress up like men from Mars when handling or working with Pydraul 150", the United States Navy decided against using Monsanto's Aroclors: "No matter how we discussed the situation, it was impossible to change their thinking that [Aroclor-containing] Pydraul 150 **is just too toxic for use** in a submarine." Markowitz & Rosner at 15. (Emphasis added.)

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60. Four months after receiving the Navy's data, Elmer P. Wheeler, Assistant Director of the Medical Department, wrote to Standard Oil Company claiming that Pydraul 150 is "practically innocuous" when fed to rats and that in studies on rabbit skin and eyes it "was not more irritating than a 10% soap solution." These were blatantly false statements. In July 1965, Dr. Kelly made the same false statements to another Monsanto customer, E.I. duPont de Nemours & Company. He failed to inform the customer of the Navy's research on the rabbits or any other studies that demonstrated toxicity in PCBs. Dr. Kelly even went so far as to say that Pydraul products certainly had no carcinogenic actions, despite Monsanto refraining from conducting any cancer studies on their products to corroborate such statements.

61. Monsanto made another attempt in 1958 to downplay consumer complaints over its PCB goods. Socony Mobil had requested to use a label alerting its own clientele about Pydraul that was bought from Monsanto and sold for resale. The label would caution customers to "[a]void prolonged breathing of vapors or mists" on the label. In response, Monsanto's medical department wrote memo stating that it would be dangerous to use such language because was "not in the best interest of Pydraul sales" and giving such a warning could affect Monsanto's sales. Monsanto's Medical Director, Dr. Kelly, sent a letter to Socony Mobil objecting to any attempt to provide a "do not breathe fumes" instruction to Pydraul users. Dr. Kelly told Socony Mobil that the warning was unsuitable for Monsanto's labelling, referencing false studies that claimed Pydraul was non-lethal to rats and rabbits.

62. In March 1962, Dr. Kelly continued to lie about Aroclors, informing the U.S. Public Health Service in a letter that though significant inhalation of Arocolors could lead to liver problems, "[Monsanto's] experience and the experience of [Monsanto's] customers over a period of nearly 25 years, has been singularly free of difficulties."

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63. Despite the evidence to the contrary and total rejection of use by the United States Navy, Monsanto continued promoting the commercial use of PCBs in school construction projects across the country, including the construction of BHS.

64. In 1967, more professional and scientific journals began paying attention to PCBs in the environment. Markowitz & Rosner at 20. The study conducted by University of Stockholm researcher, Soren Jensen, revealed that "[T]hey found 'a large number of samples' which revealed that 'polychlorinated biphenyls are found especially in fish and in sea birds... and in some samples of human depot fat. ' It was a troubling revelation that human beings were accumulating the minute amounts of PCBs." *Id.* David Wood of Monsanto received a letter from a law firm in Sweden discussing the publicity in Sweden that had been generated by the study. *Id.* Oda Palm quoted a Swedish newspaper article extensively that condemned PCBs. *Id.* Palm concluded his letter stating:

> I suppose there is no doubt that what has been termed Polychlorinated Biphenyls is equal to Aroclor. There is also no doubt that the published facts will cause considerable unrest in several quarters. We probably will have to have Aroclor registered with the Swedish Board of Poisonous Substances and the industry will have to be particularly careful in handling the material.

Id.

65. Despite the growing evidence of the harm caused to living things by PCB contamination, Monsanto remained steadfast in its manufacturing, production, sale, marketing, and distribution of PCBs. Markowitz & Rosner at 23. As studies showing the ubiquitous presence of PCBs increased, Monsanto doubled down on denial, ignoring the widespread PCB contamination and subsequent harm that such exposure caused. For example, in 1966, an article titled "Report of a New Chemical Hazard" summarized a study conducted by Swedish chemist Søren Jensen at the Institution of Analytical Chemistry at Stockholm University. The study

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estimated that PCBs may be widely dispersed in environments because manufacturing interests are using them. Dr. Kelly had been made aware of this study and its implications, but nothing was done.

66. Further, in 1968, the harmful effects of PCBs on peregrine falcons were shown in a Nature article titled, "Polychlorinated Biphenyls in the Global Ecosystem" by Dr. Richard Risebrough of the University of California,

67. In March of 1969, Monsanto researcher W.R. Richard wrote a memorandum entitled "AROCLOR WILDLIFE ACCUSATIONS" to Monsanto Employee and Medical Director Elmer Wheeler. *Id.* at 27. In this memorandum, Richard responded to the 1968 Nature article criticizing PCBs as being (in Richard's paraphrasing) "a pollutant... a toxic substance - with no permissible allowable level... [and] a toxic substance endangering man himself, implying that the [extinction] of the peregrine falcon is a leading indicator of things to come." Richard to Wheeler Aroclor wildlife accusations. March 6, 1969. Richard also explained that Monsanto could take steps to reduce PCB releases from its own factories, but he cautioned, "It will be still more difficult to control other end uses such as cutting oils, adhesives, plastics, and NCR paper. In these applications, exposure to consumers is greater and the disposal problem becomes complex." *Id.*

68. In 1969, W.R. Richard wrote a memorandum titled "Defense of Aroclor" which admitted that PCBs will cause harm to living creature and the pace of Aroclor breakdown will be slow. Richard, W.R. to Wheeler E. Defense of Aroclor-F. fluids. Sept 9, 1969. Shortly after it was written, Monsanto established the "Aroclor Ad Hoc Committee" ("the Committee") in order defend against the mounting proof of PCB toxicity and detrimental environmental effects.

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69. Though the Committee openly admitted the presence of widespread contamination of PCBs in the general environment, it was only a front to maintain its sales. The Committee's agenda was to: "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." Wheeler EP. Monsanto. Minutes of Aroclor Ad Hoc Committee, First Meeting (Sept 5, 1969).

70. In October of 1969, the Committee drafted an internal memorandum that demonstrated Monsanto's indifference over the harm their products were causing:

> The committee believes there is little probability that any action that can be taken [that] will prevent the growing incrimination of specific [PCBs] (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. There are, however, a number of 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. Wheeler E.P. to Bergen HS. Jr. and Springate JE. Monsanto (Oct 2, 1969).

71. Staying in line with the Committee's strategy, Monsanto not only maintained its sales, but increased its production of Aroclors in 1969 and 1970, making those years the largest volume manufacturing years in PCB history.

72. In September of 1969, Richard wrote an interoffice memorandum entitled "DEFENSE OF AROCLOR." Richard WR to Wheeler E. Defense of Aroclor-F. fluids. Sept 9, 1969. The memorandum set out Monsanto's general policy on defending litigation against the public: "Make the Govt., States and Universities prove their case, but avoid as much confrontation as possible." *Id.* The memorandum acknowledged that Monsanto:

> 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

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> compounds will be worse [than] lower chlorine compounds. Therefore we will have to restrict use and clean-up as much as we can, starting immediately.

Id. Based on this, Monsanto knew by the late 1960s that wildlife would be banned in the general environment, where PCB contamination is low and diffuse - as opposed to PCB contamination in a more enclosed space such as a classroom. The 1969 memorandum also outlined Monsanto's plans for challenging scientific studies of the toxicity of PCBs. *Id.* It also outlined Monsanto's own plans for chronic studies using animals. *Id.*

73. In January of 1970, Elmer Wheeler of Monsanto's Medical Department circulated laboratory results of its own animal studies. The memorandum, made public recently, was entitled "Status of Aroclor Toxicological Studies". Wheeler E. Medical Department, to D.S. Cameron, Brussels "Status of Aroclor Toxicological Studies" (Jan 29, 1970). Wheeler stated, "Our interpretation is that the PCBs 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." *Id.*

74. Monsanto expressed a desire to keep profiting from PCBs despite the research showing severe PCB toxicity. In the "PCB Presentation to Corporate Development Committee," Monsanto stated that "Do[ing] nothing was considered unacceptable from a legal, moral, customer & public relations & company policy viewpoint." Monsanto PCB Presentation to the Corporate Development Committee (April 1970). However, in Monsanto's eyes, stopping PCB production, promotion, and ending the Aroclor business "was considered unacceptable from a Divisional viewpoint... there is too much customer/market need and selfishly too much Monsanto profit to go out." *Id.* at 8.

75. Monsanto formed an internal Aroclor Ad Hoc Committee whose objective, "agreed to by the Committee," were to "submit recommendations for action which will: 1.

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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." Wheeler EP. Monsanto. Minutes of Aroclor Ad Hoc committee, first meeting (Sept 5, 1969). Monsanto set these business objectives despite knowing that PCBs had been found in the environment, wildlife, and food chain, as PCBs "may be a global contaminant." *Id.* at 1. In these confidential minutes, Monsanto recognized the problem of PCB "environmental contamination by customers." *Id.* at 3 ("Our in-plant problems are very small vs. problems of dealing with environmental contamination by customers.")

76. In October of 1969, Monsanto's Aroclor Ad Hoc Committee drafted and issued a confidential report that outlined the depths of the emerging crisis over PCBs. Wheeler EP to Bergen HS. Jr. and Springate JE. Monsanto (Oct 2, 1969). The committee reported environmental PCB contamination causing the killing of marine species and the possible extinction of several species of birds. *Id.* at 4. In addition, "the committee believes that there is no ~~possible~~ courses of action that can so effectively police the uses of these products as to prevent environmental contamination." *Id.* (underscore and strikethrough in original). The report outlined a plan to protect Monsanto's corporate interests: "There are, however, a number of ~~possible~~ 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." *Id.* (underscore and strikethrough in original).

77. The committee offered recommendations, including notifying PCB "customers of environmental contamination problems." *Id.* at 7. The basis for the recommendation, in part, concerned reports of PCB environmental contamination and Monsanto's knowledge of the mechanisms of PCB releases:

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> 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. *Id.*

78. Despite the environmental damage caused by its PCB products, Monsanto was clearly concerned about losing the production of PCBs and the associated "sales of this very profitable series of compounds":

> The committee recognizes the restrictions placed on those currently involved by mandates to operate within nonnal 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 cannot 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.

Id. at 13.

79. By 1970 the escape, fate, and transport of PCBs into surrounding environments and resulting contamination and pollution was not only reasonably foreseeable to Monsanto, but actually known to Monsanto.

80. By 1970 Monsanto also knew that its PCBs exhibited a greater degree of toxicity, accumulation, and persistence than Monsanto previously guessed. Despite its unique knowledge, Monsanto chose not to warn its customers and the public regarding the human health dangers of

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Monsanto's PCBs, instead concealing the same. Monsanto's efforts were and continue to be to focus on protecting its own profits.

81. An internal secret Monsanto memorandum dated February 16, 1970, provided excuses and active concealment techniques for any discussions outside the Company by any Monsanto representatives with any PCB customers. Monsanto's N.T. Johnson circulated a "Pollution Letter" to a large number of Monsanto employees, in which Monsanto's justification for its subterfuge was that Monsanto "can't afford to lose one dollar of business." *Id*. at 2. To that end, Monsanto stated:

> 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…

Id. at 1. Monsanto put revenue and profits way ahead of human health and environmental safety.

82. Monsanto went so far as to send this diversionary message to a member of Congress and advised public officials that Monsanto's "PCBs are not used in some of the applications which have been indicated in the public press." Elmer Wheeler to W.R. Richard (May 26, 1969). Monsanto expressed its views to the public, stating: "We cannot conceive how the PCBs can be getting into the environment in a widespread fashion and the company is actively involved in research programs to try to shed some light on the situation." *Id*. at 2. This was a lie.

83. For decades prior, Monsanto's knowledge of PCB toxicity grew. Despite its knowledge of PCB toxicity, Monsanto intentionally produced and promoted PCBs "for use in a wide range of industrial and household goods, including electrical equipment, paint, sealants, food cookers, furnaces, floor wax, insecticides, lubricants, moisture-proof coatings, papers,

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asphalt, leather adhesive, and stucco." *City of Seattle v. Monsanto Co.*, 237 F. Supp. 3d 1096, 1100 (W.D. Wash. 2017).

84. "Though Monsanto was aware of PCB's toxicity and propensity to leach, it denied or misrepresented those facts to government investigators. Monsanto continued to manufacture. promote, and profit from its PCBs." *Id*. (holding that Seattle's claims against Monsanto for public nuisance are not preempted - rejecting Monsanto's argument that intervening acts of third parties cut off proximate causation, because such acts were foreseeable by Monsanto).

85. Monsanto intentionally failed to warn customers and the public regarding the toxicity and hazards of its PCB products. *Nevada Power Co. vs. Monsanto Co.*, 955 F.2d 1304, 1306-07 (9th Cir. 1992) ("Nevada Power discovered internal documents of the Manufacturers which Nevada Power contends to show that the Manufacturer's understanding of the dangers of PCBs in the 1960s and early 1970s was much more advanced than the general state of knowledge in the scientific community").

86. Monsanto's PCBs were unreasonably safe for use in school construction because extremely toxic, to an extent beyond that which would be contemplated by an ordinary consumer. The toxicity of Monsanto's PCBs was a proximate cause of Plaintiffs' damages.

87. Monsanto's PCBs were an unavoidably unsafe product, which was a proximate cause of Plaintiffs' damages, reasonably foreseeable to Defendants.

88. Monsanto warnings to the non-Monsanto parties in this case at the time of manufacture regarding the extreme toxicity of PCBs, were inadequate and a proximate cause of Plaintiffs' damages.

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89. Monsanto warnings to pertinent non-Monsanto entities or persons in this case after manufacture—and up to present day—regarding the toxicity of Monsanto's PCBs have been inadequate, which was a proximate cause of Plaintiffs' damages.

90. Due to their toxicity, Monsanto's PCBs never had a "useful safe life."

91. Monsanto had actual and/or constructive knowledge of the defect and the danger of its PCBs but showed indifference or conscious disregard for the safety of others by producing and promoting PCBs.

E. Monsanto Intentionally Promoted, Monetized, And Contaminated Buildings Constructed Or Renovated Before 1980s With Toxic Pcbs.

92. Unfortunately for Plaintiffs, Monsanto's campaign of deception was a success. Monsanto sold PCB-containing products to customers who then used them in building materials and electrical equipment in construction up to the 1980s. Studies show that PCB contamination is widespread as a result. A study in the Journal of Environmental Health Perspectives found that 54% of the buildings tested in Boston that were constructed or renovated in the 1970s tested positive for PCBs, with concentrations ranging from 0.56-32,600 parts per million (PPM). Another study of buildings renovated or constructed in San Francisco found that 88% of samples taken were positive for PCBs, with concentrations ranging between 1-220,000 PPM. A Harvard study suggested that approximately 30% of school children may be exposed to dangerous PCBs daily during school. Thomas, "PCBs in school buildings: sensible steps to healthier school environments," U.S. EPA Office of Research and Development (2014). These studies demonstrate that PCBs contamination in older buildings is widespread in the United States and has exposed millions of Americans, including the Sacha, to Monsanto's toxic PCB products.

93. Schools renovated or built before 1980 are more likely to have PCBs in their building materials, typically as plasticizers in caulking, paints, ballasts, sealants, electrical

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transformers, lighting ballasts, and other applications in the construction of schoolhouses, including the construction of BHS and other facilities. In these forms, Monsanto's PCBs were used in interior and exterior windows, doors, and masonry joints.

94. According to the EPA, even today, caulk containing high PCB levels is still prevalent in school buildings. *Id.*

95. PCB-caulking emits PCBs into the ambient air in school buildings, which migrate into the air and nearby materials, including adjoining wood, cement, and brick air and dust inside schools; soil near school buildings; and other materials and furnishings; and into the bodies of men, women, and children in the buildings, including the Sacha's. *Id.* Similarly, PCB electrical transmitters and lighting ballasts emit PCBs into the ambient air in school buildings, which migrate into the air and nearby materials, including adjoining wood, cement, and brick; air and dust inside schools; soil near school buildings; and other materials and furnishings; and into the bodies of men, women, and children in the buildings, including Sacha.

96. As stated by the EPA, PCB-caulking and other sealants in school buildings can create indoor air levels above recommended concentrations. In addition, "high PCB levels remain and emissions will continue far into the future." *Id.*

97. Monsanto's PCBs were also produced and promoted at components of electrical equipment such as transformers, motor start capacitors, and lighting ballasts.

98. "Commercial PCB mixtures vary from colorless to dark brown oils, and from viscous liquids to sticky resinous semisolids. Although PCBs evaporate slowly at room temperature, the volatility of PCBs increases dramatically with even a small rise in temperature. Equipment that contains PCBs can overheat and vaporize significant quantities of these

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compounds, creating an inhalation hazard that can be magnified by poor ventilation." (ATSDR, 2014) at 25.

99. In schools located in the northeastern United States, nearly one-in-five interior caulk/sealant samples had PCBs of greater than 50 ppm, with 6% greater than 100,000 ppm. *Id*. Further, PCB-containing light ballasts were manufactured until the late 1970s. Anywhere from 24%-95% of the light ballasts in northeastern schools likely contained PCBs. The "failure and release of PCBs will continue and may increase" in school buildings containing PCB-light ballasts. *Id*. PCBs are continuously released into the air from intact, functioning light ballasts. *Id*. at 11. PCB ballasts can fail, releasing PCB vapors into the air and liquid PCBs onto surfaces. *Id*. "Residues from previously failed ballasts can remain in light fixtures even if the ballast is replaced." *Id*. 91. There are also extremely toxic chemical byproducts of PCB-ballasts such as dioxins and furans. Failing PCB-ballasts that pyrolyze their PCB contents generate and emit additional toxic chemicals called polychlorinated dibenzodioxins and polychlorinated dibenzofurans. 50 Fed. Reg. 29, 171 (July 17, 1985); Ahrens v. Pacific Gas & Electric Co., 197 Cal. App. 3d 1134, 1139, n. 2 (1988).

100. Gradually over time, school building materials become secondary sources of PCB contamination after absorbing PCBs emitted from the primary contamination sources. EPA (2014) at 12. The EPA even noted that in some cases, secondary sources "may need to be considered for additional remedial actions following removal/remediation of primary sources." *Id*.

101. Further, Monsanto has followed the internally branded "sleeper issue" of toxic PCBs in school buildings closely as recently as 2010, when Bob Pierce the Monsanto public

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affairs director prepared an anticipatory statement in response to schools and states looking into this severe "sleeper issue" poisoning children, teachers, and staff across the country.

102. For these reasons and others, Monsanto knew or should have known that PCBs were unsafe for use in schools. Monsanto made no efforts to warn schools, including BHS, the parents of BHS schoolchildren that attended the school, or the teachers and staff who worked at BHS.

103. Monsanto's PCBs were not reasonably safe for use in school construction because they were extremely toxic to an extent beyond that which would be contemplated by an ordinary consumer. The toxicity of Monsanto's PCBs is a proximate cause of Sacha's damages. When a reasonably careful manufacturer learns that its product is toxic and poses a danger to public health, the manufacturer must stop producing and selling the product and issue an immediate recall, take remedial measures, such as abatement, and/or warn the public about the product. This is especially the case when a manufacturer knows or reasonably should know that its toxic products are in schoolhouses, buildings, libraries, and other public facilities.

104. Despite knowing about PCB toxicity and the danger to public health and the environment and/or of schoolhouse applications, Monsanto did not take the responsible measures outlined in the foregoing paragraph. Instead, Monsanto continued to promote and profit from its sale and manufacture of toxic PCBs and actively concealed from the public the toxic nature of PCBs, and their ubiquitous presence even in schoolhouses. The only measures that Monsanto took were to destroy incriminating documents, conceal the truth from the public, deploy hundreds of lawyers to assist it in its concealment strategies, and disengage its own employees from any responsibilities or duties with regard to PCBs.

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105. Monsanto recently acknowledged how widespread PCBs are as pollutants from PCB containing products in stormwater throughout the United States. In June 2020, Monsanto agreed to pay $550 million into a common fund to be distributed to over 2,000 class members across the United States. The class members included different cities alleging that Monsanto's design, manufacture, sale, promotion, and supply of PCBs resulted in the contamination of stormwater and other resources. Monsanto thus acknowledged that it was responsible for PCBs in stormwater throughout the United States regardless of the immediate source of the PCBs.

106. Additionally, Washington state court cases have resulted in jury verdicts against Monsanto for schoolteachers who alleged neurological and physical injuries caused by exposure to PCBs within schools. Monsanto continues to fight against these and other schoolteachers and schoolchildren who have been exposed to Monsanto's PCBs in schoolhouses.

F. Toxic PCB Contamination Is Widespread In Vermont.

107. Vermont schools are not exempt from PCB exposure. PCB contamination has affected several Vermont schools, including BHS which Sacha attended.

108. Similar to other schools in the United States, buildings constructed before 1980 in Vermont contained PCBs in their building materials and electrical equipment. As specified by the EPA, "occupants in schools with interior PCB sources will be exposed to PCBs in the indoor air, dust, and on surfaces through their normal activities." For Sacha and others in such school buildings, "exposures will occur through inhalation, ingestion, and dermal contact." EPA (2014) at 16.

109. Vermont has been so affected by Monsanto's toxic PCBs that on June 8, 2021, the Vermont Legislature passed Act 74 which required that all schools constructed or renovated before 1980 test their indoor air for PCBs.

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110. Monsanto did not warn the Plaintiffs or others of the toxicity and presence of PCBs as a public health hazard in schoolhouses, at BHS, or the environment.

111. Monsanto did not provide the public with warnings, notices, or information that PCBs are present in schoolhouses and are extremely toxic and threaten public health. Information provided by Monsanto during or after manufacture of PCBs has been inadequate and/or false and misleading.

112. Monsanto's PCBs have contaminated schools in Vermont, including BHS, causing harm to the children, students, teachers, staff members, contractors, occupants, and others of the school, including Sacha. This was not only reasonably foreseeable, but it was known to Monsanto that such harm would come to third parties such as Plaintiffs. Accordingly, Plaintiffs seek compensatory and punitive damages against Monsanto.

113. It was also reasonably foreseeable, based on Monsanto's history and experience with PCB customers and users, that some inspectors, owners, operators, providers, or maintainers of buildings would engage in negligent conduct that would result in harm to innocent third parties, such as teachers and schoolchildren, including Sacha, by exposing them to Monsanto's PCBs.

114. Monsanto's PCBs continue to contaminate schools built and/or renovated before 1980, including BHS, because Monsanto intentionally produced and promoted PCBs in a variety of construction applications. As a result of this conduct, it was reasonably foreseeable that PCBs would be incorporated in buildings and would contaminate classrooms used by people, including Sacha, causing her damages. Monsanto's PCB contamination of BHS was a legal cause of injury to the Plaintiffs.

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115. Monsanto has had unique and vital information relating to PCBs it has concealed, diminished, and/or suppressed from the public including: strategies to mitigate PCB risks; scientific data manipulation related to the detrimental impact of PCBs on human health: internal responses to the allegations made by the cities of San Diego, San Francisco and Spokane and other cities and schools in their lawsuits against Monsanto; facts regarding approximately 700 lawsuits for PCB pollution; internal views on certain publications and articles; and the IBT laboratory scandal launched by a former Monsanto employee who Monsanto coddled, used. benefitted from, and then re-employed by Monsanto.

116. As specified by the EPA, "occupants in schools with interior PCB sources will be exposed to PCBs in the indoor air, dust, and on surfaces through their normal activities." For Sacha and others in such school buildings, "exposures will occur through inhalation, ingestion, and dermal contact." EPA (2014) at 16.

G. Monsanto Contaminated BHS With Toxic Pcbs That Caused Sacha's Injuries.

117. BHS was built in 1964. After over 50 years of operation, in November of 2018, BHS was approved for a major renovation project. BHS Re-Envisioning Project Information and Timeline, September 29, 2020.

118. A Phase I Environmental Assessment ("ESA") is a standard early step in the process when planning a major construction or renovation of a facility. In February of 2019, the BHS School Board began taking Phase I ESA proposals. *Id.*

119. In late April 2019, the first ESA at BHS was conducted internally by BHS. No sampling or testing at BHS was performed at this time. There was enough information collected, however, to justify sampling and testing for PCBs. ATC Phase I ESA Report (April 26, 2019).

120. The Phase II ESA report for BHS, issued in mid-July 2019, stated:

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> The presence of PCBs in soil constitutes a release in accordance with 35-102(b)(5) of IRule which should be reported to the Waste Management and Prevention Division (WMPD).
>
> Any renovation involving soils beneath the Building F elevator pit be conducted pursuant with a soil handling plan including details on worker protection and disposal practices.

121. ATC Phase II ESA Report (July 15, 2019). The Phase II report addressed "Development Soils" (a/k/a "Urban Soils"). The Development soils section concludes: "The samples that exceed the VT Urban BSS and non-residential VSS constitute a release in accordance with 35-102(b)(5) of Irule which should be reported to WMPD. As per Irule procedures, a complete site investigation should be conducted to adequately define the degree and extent of contaminants on-site. The site investigation should be supported by engineered cut and fill plans." *Id.*

122. After continued sampling at BHS, the Burlington Construction Oversight Committee met multiple times to discuss the findings. Specifically, PCBs had been detected in building material, "found mostly in window caulking." BCOC public meeting presentation (November 11, 2019). The presentation stated that "PCBs have leached into masonry and are at actionable levels." *Id.* At Slide 12. BCOC began to consider engaging a third-party environmental consultant to provide a second opinion and analysis of the sampling already done and review the work plans.

123. In mid-July 2020, BHS received a report showing PCB levels at BHS in every building at the school. ATC PCB Substrate Core Sampling Results (July 17, 2020). The BHS reconstruction project team decided that the current campus was too contaminated to renovate and opted for finding an entirely new location for the school.

124. Given what we know about PCBs today, and what Defendants knew for decades, it is apparent that BHS has exhibited similar, the same, or higher levels of PCBs since its erection

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because PCBs degrade extremely slowly and PCBs continue to contaminate and render toxic school buildings and facilities more than half a century after PCBs were banned, even sometimes requiring demolition like at BHS.

H. PCB Exposure At BHS Proximately Caused Sacha's Injuries.

125. Sacha attended high school at BHS from 1990 to 1994. Sacha spent four years being exposed to Defendants' toxic PCBs every day while she attended school at BHS: attending classes, eating lunch, and breathing in the toxic air. While at BHS, Sacha was exposed daily to PCB levels ranging from triple to 420 times the school action levels, 100ng/m3 for 7th grade through adult. Especially in Building F, Sacha was exposed to levels as high as 6,300ng/m3.

126. Sacha has developed various health issues linked to her exposure to toxic PCBs while attending BHS, including: (1) grade 2 renal cell carcinoma of the kidney requiring surgery and treatment; (2) breast cancer requiring surgery and treatment, including the removal of four lymph nodes; (3) a fibroid tumor in her uterus, from which she awaits further diagnosis; and (4) thyroid and reproductive issues.

127. Sacha suffered and continues to suffer the burdens of these cancers, thyroid and reproductive issues, and the high price tags associated with cancer treatment and monitoring, all caused by the exposure to Defendants' toxic PCBs.

128. As Kenny was married to Sacha at the time the cause of action accrued, Kenny has a legal claim for loss of the enjoyment of life, as a result of the serious harm caused to his wife, Sacha.

129. All of Plaintiffs' injuries and damages are due to, caused by, and or a substantial factor of exposure to PCBs at BHS, with Defendants jointly, severally, and independently responsible and liable for the same.

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COUNT I
Strict Liability – Design Defect

130. Plaintiffs re-allege and incorporate by reference the preceding allegations as though set forth fully herein.

131. Defendants designed, manufactured, marketed, distributed, and sold PCBs and PCB-containing products.

132. As designers, manufacturers, marketers, distributors, and sellers of PCBs and PCB containing products, Defendants owed a duty to all persons at risk of foreseeable harm from PCBs, including Sacha, to not market any PCB product which is unreasonably dangerous for its intended and foreseeable uses.

133. Defendants represented, asserted, claimed, and warranted that their PCBs and PCB containing products were safe for their intended and foreseeable uses, including at BHS.

134. When Defendants or their predecessors placed their PCBs and PCB-containing products into the stream of commerce, they were defective, unreasonably dangerous, and not reasonably suited for their intended, foreseeable, and ordinary storage, handling, and usage, including for construction purposes at BHS.

135. Defendants knew that PCBs would escape and poison the occupants of BHS because Defendants knew that:

a. PCBs escape their applications, including construction materials, to contaminate indoor air and surfaces in buildings using PCB-containing construction materials through the normal and foreseen use of PCBs and PCB-containing products.

b. PCBs accumulate and persist over time in indoor spaces after volatilizing or off gassing from construction materials used in build.

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c. PCBs persist over long periods of time because PCBs are resistant to biodegradation and bioremediation.

d. PCBs bioaccumulate in humans.

e. PCBs pose risks to human health.

f. The risks that PCBs pose to Vermont schools, like BHS, outweigh the utility of incorporating PCBs into product formulations, including in paper products, plastics, resins, adhesives, inks, varnishes, construction materials, and electrical equipment.

g. Safer alternatives to PCBs have existed and been available to Defendants or their predecessors at all times relevant to this litigation.

h. Defendants had knowledge of these risks and failed to use reasonable care in the design of PCBs and PCB-containing products.

136. A reasonable company with the above outlined knowledge of the potential of PCBs to cause injuries to human beings would conclude that they should not have been manufactured, distributed, marketed, promoted, and sold as a product, component for a product, or for the products in which they were incorporated.

137. A reasonable company who had knowledge that PCBs cannot be contained would conclude that they should not have been manufactured, distributed, marketed, promoted, and or sold.

138. Despite Defendants' knowledge of PCB health hazards, Defendants intentionally sold, promoted, and distributed the PCBs and PCB-containing products in the manner reasonably foreseen, or as should have been reasonably foreseen by the Defendants, in order to maximize its profits with complete disregard of guaranteed injuries to human beings.

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139. The above defects exceeded the knowledge of the ordinary person and by the exercise of reasonable care, Sacha would not be able to avoid the harm caused by PCBs at BHS.

140. BHS, like many other Vermont schools, is and has been contaminated with dangerous PCBs as a direct result of Defendants' conduct since construction.

141. Plaintiffs have incurred and will continue to incur costs and expenses to monitor and heal the damages caused to her health, including but not limited to kidney cancer, breast cancer, fibroid tumor in her uterus, thyroid issues, and reproductive issues, due to exposure to Defendants' toxic PCBs for which Defendants are strictly, jointly, and severally liable.

142. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered and continue to suffer monetary damages to be proven at trial.

143. Defendants continue to cause harm in Vermont and across the country by failing to remediate its toxic PCBs.

COUNT II
Strict Liability – Failure To Warn

144. Plaintiffs re-allege and incorporate by reference the preceding allegations as though set forth fully herein.

145. Defendants designed, manufactured, marketed, distributed, and sold PCBs and PCB-containing products.

146. As designers, manufacturers, marketers, distributors, and sellers of PCBs and PCB containing products, Defendants owed a duty to all persons at risk of foreseeable harm from PCBs, including Sacha, to issue adequate warnings and instructions to prevent, avoid, or otherwise eliminate unreasonable risks of harm to person and property, including at BHS, arising from PCBs.

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147. Defendants knew that their PCBs and PCB-containing products would be purchased and implemented into BHS construction without notice of the hazards which PCBs will pose to occupants, including Sacha.

148. Defendants' failure to warn of these hazards made their PCBs and PCB-containing products unreasonably dangerous.

149. At all times relevant to this litigation, Defendants had actual and or constructive knowledge of facts, including the following, which rendered their PCBs and PCB-containing products hazardous to Plaintiffs and other occupants of Vermont schools.

a. PCBs escape their applications, including construction materials, to contaminate indoor air and surfaces in buildings using PCB-containing construction materials through the normal and foreseen use of PCBs and PCB-containing products.

b. PCBs accumulate and persist over time in indoor spaces after volatilizing or off gassing from construction materials used in build.

c. PCBs persist over long periods of time because PCBs are resistant to biodegradation and bioremediation.

d. PCBs bioaccumulate in humans.

e. PCBs pose risks to human health.

f. The risks that PCBs pose to Vermont schools, like BHS, outweigh the utility of incorporating PCBs into product formulations, including in paper products, plastics, resins, adhesives, inks, varnishes, construction materials, and electrical equipment.

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g. Safer alternatives to PCBs have existed and been available to Defendants or their predecessors at all times relevant to this litigation.

h. Defendants had knowledge of these risks and failed to use reasonable care in the design and distribution of PCBs and PCB-containing products.

150. The foregoing facts relating to the hazards that PCBs pose to Sacha and other occupants of PCB contaminated buildings, including schools like BHS, are not the sort of facts that, at the relevant times, Sacha could have ordinarily discovered or protected herself against absent sufficient warnings and instructions from the Defendants.

151. Defendants and or their predecessors breached their duty to warn by unreasonably failing to provide warnings concerning any of the facts alleged here to Sacha, Vermont schools, public officials, consumers, and or the general public.

152. Defendants further breached their duty to warn by unreasonably failing to provide adequate instructions concerning steps to be taken to prevent, avoid, or otherwise eliminate unreasonable risks of harm to person and property, including the environment, arising from PCBs and PCB-containing products ultimately resulting in dangerously high levels of PCB exposure for Sacha at BHS.

153. Defendants' failure to warn proximately caused reasonably foreseeable injuries to Sacha.

154. A reasonable company who had knowledge of the potential of PCBs to be unable to be contained would have concluded that it must refrain from producing and selling PCBs, or at least provide adequate notice and warning to prevent, avoid, or otherwise eliminate unreasonable risks of harm to persons like Sacha.

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155. Defendants intentionally sold, promoted, and distributed the PCBs and PCB containing products in the manner reasonably foreseen, or as should have been reasonably foreseen by the Defendants without any warning or notice despite the knowledge of health hazards in order to maximize its profits regardless of guaranteed injuries to human beings.

156. Sacha and others would have heeded legally adequate warnings and instructions if such were present.

157. The above defects exceeded the knowledge of the ordinary person and by the exercise of reasonable care, Sacha would not be able to avoid the harm caused by PCBs at BHS absent warning from the Defendants.

158. BHS, like many other Vermont schools, was contaminated with dangerous PCBs as a direct result of Defendants conduct and Sacha was exposed to Defendants toxic PCBs at BHS.

159. Sacha has incurred and will continue to incur costs and expenses to monitor and heal the damages caused to her health, including but not limited to kidney cancer, breast cancer, fibroid tumor in her uterus, thyroid issues, and reproductive issues, due to exposure to Defendants toxic PCBs for which Defendants are strictly, jointly, and severally liable.

160. As a direct and proximate result of Defendants' conduct and failure to warn, Plaintiffs have suffered and continue to suffer monetary damages to be proven at trial.

161. Defendants continue to cause harm in Vermont and across the country by failing to remediate its toxic PCBs.

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COUNT III
Negligence

162. Plaintiffs re-allege and incorporate by reference the preceding allegations as though set forth fully herein.

163. Defendants owed Sacha a duty of reasonable care.

164. Defendants negligently breached that duty of reasonable care by manufacturing, marketing, labelling, packaging, and distributing its PCBs and PCB containing products that are dangerous and hazardous to the public, including Sacha, when used ordinarily and as intended in construction, such as at BHS, and a multitude of other applications.

165. As described above, for approximately half a century, Defendants were aware of the hazards of PCBs, and either knew or should have known that its PCBs would be released into the environment or absorbed within an enclosed system such as a school building and its occupants.

166. Despite this actual and constructive knowledge, Defendants continued to market and sell its PCBs aggressively. Defendants' ongoing negligence caused, legally caused, and or contributed to cause:

a. PCB contamination at BHS;

b. Sacha's prolonged exposure to PCBs at BHS;

c. The accumulation of PCBs in Sacha's body;

d. Sacha's personal injuries, including but not limited to kidney cancer, breast cancer, a yet to be fully diagnosed fibroid tumor in her uterus, thyroid issues, reproductive issues;

e. Severe emotional distress;

f. Economic and non-economic damages; and

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g. Damage to the Plaintiffs' marital relationship.

167. As a direct and proximate result of Defendants' conduct, Sacha has suffered and continues to suffer monetary damages to be proven at trial.

168. Defendants' conduct was willful, wanton, grossly negligent, and or in reckless disregard for Sacha's rights, thereby justifying an award of punitive damages against the Defendants.

COUNT IV
Failure to Warn

169. Plaintiffs re-allege and incorporate by reference the preceding allegations as though set forth fully herein.

170. Plaintiffs allege that Defendants' knowledge of the dangers inherent in PCBs at the time Defendants manufactured and sold PCBs created a non-delegable duty to warn Sacha, the public, and Defendants' own customers.

171. Defendants knew or should have known that PCBs were dangerous to humans to an extent beyond which would be contemplated by an ordinary consumer and the innocent and intended third party beneficiaries, children, and schoolteachers.

172. Despite this actual knowledge of the inherent dangers of its products. Defendants have made no attempts to warn the public, Sacha, or BHS of the health hazards and toxicity of PCBs.

173. To the contrary, Defendants have taken every means possible to attack the science, undermine the science, ignore the EPA's findings on PCBs, conceal the hazardous nature of PCBs from the public, prolong its manufacture and profit from selling toxic PCBs, and

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allowed innocent children, including Sacha, and schoolteachers to be exposed to toxic PCBs in school facilities, including BHS, all to increase Defendants' profits.

174. A reasonable company who had knowledge of the toxicity of PCBs and the inability of containment of PCBs, would have concluded that it must refrain from producing and selling PCBs, or at least provide adequate notice and warning to prevent, avoid, or otherwise mitigate unreasonable risks of harm to persons like Sacha.

175. For the reasons above, Defendants' failures to warn constitute negligent failure to warn. Moreover, Defendants' failures to warn render Defendants' PCB products defective in their representation, sales, distribution, and permitted uses.

176. Defendants' negligent failure to warn caused, legally caused, and or contributed to cause:

a. PCB contamination at BHS;

b. Sacha's exposure to PCBs at BHS;

c. The accumulation of PCBs in Sacha's body;

d. Sacha's personal injuries, including but not limited to kidney cancer, breast cancer, a yet to be fully diagnosed fibroid tumor in her uterus, thyroid issues, reproductive issues;

e. Severe emotional distress;

f. Economic and non-economic damages; and

g. Damage to the Plaintiffs' marital relationship.

177. As a direct and proximate result of Defendants' conduct, Sacha has suffered and continues to suffer monetary damages to be proven at trial.

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178. Defendants' conduct was willful, wanton, grossly negligent, and or in reckless disregard for Sacha's rights, thereby justifying an award of punitive damages against the Defendants.

COUNT V
Misrepresentation

179. Plaintiffs re-allege and incorporate by reference the preceding allegations as though set forth fully herein.

180. Defendants were aware of the hazards, risks, and fate and transport of PCBs, and either knew or should have known that its PCBs would be released into the environment and or absorbed within an enclosed systems such as school buildings, including BHS.

181. Defendants had a duty to disclose the known dangers of PCBs. Despite this knowledge, Defendants never disclosed or otherwise informed its customers, BHS, the public, or Sacha of the inherent dangers and toxicity of PCBs. Instead, Defendants actively, intentionally, and or negligently concealed and or omitted material facts as to what Defendants knew and when Defendants discovered the toxicity and risks of PCBs in general and as construction materials. Defendants continued to promote and sell PCBs without disclosing the truth of their toxicity, dangers, and hazards.

182. Defendants concealed for many years its knowledge of the dangers, toxicity, and hazards of PCBs. Sacha reasonably relied upon Defendants omissions of material facts and failures to disclose to her detriment. As a proximate cause of said reliance, Sacha has suffered the injuries and damages as alleged herein, including but not limited to:

a. The accumulation of PCBs in Sacha's body;

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b. Sacha's personal injuries, including but not limited to kidney cancer, breast cancer, a yet to be fully diagnosed fibroid tumor in her uterus, thyroid issues, reproductive issues;

c. Severe emotional distress;

d. Economic and non-economic damages; and

e. Damage to the Plaintiffs' marital relationship.

183. Defendants' misrepresentations were willful, wanton, grossly negligent, and/or in reckless disregard for Sacha's rights, thereby justifying an award of punitive damages against the Defendants.

COUNT VI
Loss of Consortium

184. Plaintiffs re-allege and incorporate by reference the preceding allegations as though set forth fully herein.

185. At all times relevant to the allegations in this Complaint, Plaintiffs Sacha and Kenny have been married to each other.

186. As a contributing and proximate cause of the tortious conduct and/or negligence of the Defendants, Kenny has been deprived of the services, society, consortium and companionship of his spouse, Plaintiff Sacha, and is entitled to damages from the Defendants.

187. Defendants' conduct was willful, wanton, grossly negligent, and/or in reckless disregard for these Plaintiffs' rights, thereby justifying an award of punitive damages against the Defendants.

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Claims for Relief

WHEREFORE, Plaintiffs seek and prays for the following relief from and against all Defendants individually, jointly, and severally:

A. Compensatory damages for physical injury, pain, and suffering and mental and emotional distress, pain and suffering (past, present, and future);

B. Medical expenses, including future medical monitoring and life care plan expenses;

C. Lost wages, employment benefits, and income;

D. Loss of enjoyment of life;

E. Punitive damages;

F. All other damages awarded at law or in equity;

G. Attorneys' fees and costs;

H. Awarding prejudgment interest, and punitive damages as permitted by law;

I. Any other relief as the Court deems just and proper; and

J. Damage to the Plaintiffs' marital relationship

JURY DEMAND

Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

Dated: January 22, 2024

/s/ Matthew B. Byrne

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**Pro hac vice* applications forthcoming.

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