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Anna Maria Hodges
Clerk of Circuit Court
MILWAUKEE COUNTY
Honorable Glenn H
Yamahiro-34
Branch 34

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT
260 W. Seeboth Street
Milwaukee, WI 53204,

CITY OF MILWAUKEE, WISCONSIN
200 E. Wells Street, Room 800
Milwaukee, WI 53202,

Plaintiffs,

CHUBB CUSTOM INSURANCE COMPANY
c/o CT Corporation, Registered Agent
301 S. Bedford Street, Suite 1
Madison, WI 53703,

Involuntary Plaintiff,

v.

MONSANTO COMPANY
c/o Corporation Service Company, Registered Agent
33 E. Main Street, Suite 610
Madison, WI 53703,

SOLUTIA, INC.
c/o United Agent Group, Inc., Registered Agent
4650 W. Spencer Street
Appleton, WI 54914,

PHARMACIA, LLC
c/o C T Corporation System, Registered Agent,
301 S. Bedford Street, Suite 1
Madison, WI 53703,

Defendants.

Case No. _____
Case Code: 30100

JURY TRIAL DEMAND

CIVIL COMPLAINT

The Milwaukee Metropolitan Sewerage District (the "District") and the City of Milwaukee (the "City") (collectively, "Plaintiffs"), by their attorneys, Halling & Cayo, S.C., file this

Complaint against Defendants Monsanto Company (“Current Monsanto”), Solutia, Inc. (“Solutia”), and Pharmacia LLC (“Pharmacia”)(collectively, “Defendants”). Plaintiffs allege as follows:

NATURE OF THE ACTION

1. This lawsuit arises out of the past and continuing contamination of Plaintiffs’ property, natural resources, and the environment with polychlorinated biphenyls (“PCBs”). Both the United States Environmental Protection Agency (“EPA”) and the International Agency for Research on Cancer (“IARC”) have classified PCBs as a probable carcinogen. Approximately 99% of the PCBs sold in the United States were manufactured by The Monsanto Company (“Original Monsanto”) and Original Monsanto was aware for decades of the risks these toxic chemicals posed to public health and the environment. It knew or should have known that its PCBs and PCB-containing products would ultimately find their way into sewers, soils and sediments where they would persist for decades longer, requiring local governmental entities like the District and the City to incur substantial costs, losses and damages. Defendants have succeeded to or have agreed to bear the liabilities of the Original Monsanto and should bear these costs and Plaintiffs’ other damages, not the taxpayer.

PARTIES

2. The District is a metropolitan sewerage district created under § 200.23(1)(b) of the Wisconsin Statutes, with its principal offices located at 260 W. Seeboth Street, Milwaukee, Wisconsin. The District was created in 1982 by the Wisconsin Legislature to consolidate the then-existing Sewerage Commission of the City of Milwaukee and the Metropolitan Sewerage Commission of Milwaukee County. The District’s mission is to protect public health, property, and the environment by providing wastewater conveyance, treatment, and flood management

services within a territory that includes all the cities and villages in Milwaukee County (except the City of South Milwaukee), and all or part of nine municipalities in Ozaukee, Washington, and Waukesha counties, as well as a portion of the Village of Caledonia in Racine County. The District currently serves 28 municipalities, about 1.1 million people and countless businesses and is governed by an eleven-member commission (the “Commission”).

3. The City of Milwaukee is a municipal corporation organized as a First-Class City under Chapter 62 of the Wisconsin Statutes, with its City Hall located at 200 E. Wells Street. The City Department of Public Works maintains a system of both separate and combined sewers that connect to the District’s system. The City has also established a Harbor Commission to operate the Port of Milwaukee, including harbor development and improvement, recreational use of the harbor, and leasing of harbor lands and facilities. The Department of City Development (DCD) is generally charged with improving the quality of life in the City by guiding and promoting development that creates jobs and strengthens the urban environment, which includes managing environmental contamination projects on City property and overseeing investigation and cleanup of contamination on tax-delinquent and brownfield properties suitable for redevelopment. The City also has an annual cooperation agreement with the Redevelopment Authority of the City of Milwaukee (RACM), whereby DCD provides professional, technical and administrative support to RACM, including real estate acquisition and disposition, property management and environmental investigations.

4. CHUBB Custom Insurance Company (CHUBB) is a foreign insurance company named as an involuntary plaintiff pursuant to § 803.03(2)(a), Wis. Stats, whose principal place of business is 202B Hall’s Mill Road, Whitehouse Station, NJ 08889. Its registered agent for service of process is CT Corporation System, 301 S. Bedford St., Suite 1, Madison Wisconsin, 53703.

CHUBB has provided insurance benefits to the District for certain of the losses sustained by the District as hereinafter set forth and may be so obliged in the future and, therefore, has or may have a subrogation interest herein to the extent of its past and future payments.

5. The Monsanto Company (“Current Monsanto”) is a foreign corporation qualified to do business in Wisconsin with its principal place of business located at 800 N. Lindbergh Blvd, St. Louis, Missouri. Its registered agent in Wisconsin is Corporation Service Company, 33 East Main Street, Suite 610, Madison, Wisconsin 53703. Upon information and belief, Current Monsanto is a wholly owned subsidiary of Bayer AG.

6. Solutia, Inc., is a foreign corporation qualified to do business in Wisconsin with its principal place of business located at 200 S. Wilcox Drive, Kingsport, Tennessee. Its registered agent in Wisconsin is United Agent Group, Inc., 4650 W. Spencer Street, Appleton, Wisconsin 54914. Upon information and belief, Solutia is a wholly owned subsidiary of Eastman Chemical Company.

7. Pharmacia LLC is a foreign limited liability company registered to do business in Wisconsin with its principal place of business located at 100 Route 206 North, Peapack, New Jersey. Its registered agent in Wisconsin is CT Corporation System, 301 S. Bedford Street, Suite 1, Madison, Wisconsin 53703. Upon information and belief, Pharmacia is a wholly owned subsidiary of Pfizer Inc.

8. Beginning in 1997, Original Monsanto underwent a series of transactions, the effect of which was to spin off Original Monsanto into three entities: the Current Monsanto Company, which took on Original Monsanto’s agricultural business; Solutia, which took on the chemical business; and Pharmacia, which took on the pharmaceutical business.

9. Current Monsanto, Solutia, and Pharmacia have entered into various agreements regarding indemnification and the sharing and apportionment of liabilities such that all three Defendants have succeeded to, and/or have agreed to bear, the liabilities of Original Monsanto that relate to PCBs. These agreements include ones entered when Solutia underwent a Chapter 11 bankruptcy reorganization between 2003 and 2008.

JURISDICTION AND VENUE

10. Plaintiffs bring this action as owners of property contaminated by PCBs, and under their respective authority to protect the interests in the health, safety and welfare of the public, and to seek damages and enjoin and abate public nuisances under Wis. Stat. §§ 823.01 and 823.02.

11. This Court has personal jurisdiction over Defendants pursuant to Wis. Stat. § 801.05(1)(d)(3), and (4). At all times relevant to the Complaint, Original Monsanto engaged in substantial business with and had substantial connections and/or contacts with the State of Wisconsin, including promoting, selling, distributing, storing, handling, using, and/or disposing of PCBs in the state. Defendants have succeeded to, or have agreed to bear, the liabilities of Original Monsanto whose acts and omissions—conducted both within and outside of Wisconsin—were a cause of the Plaintiffs injuries.

12. Defendants' connections with Wisconsin also satisfy the requirements of the Due Process Clause of the Fourteenth Amendment as each has purposefully availed itself of the privilege of conducting business in Wisconsin. Defendants have succeeded to, or have agreed to bear, the liabilities of Original Monsanto and the claims in the Complaint arise from Original Monsanto's design, manufacture, promotion, sale, distribution, use and/or disposal of PCBs both within and outside the state such that traditional notions of fair play and substantial justice afford this Court with jurisdiction.

13. Venue is proper in this Court pursuant to Wis. Stat. § 801.50(2)(a) and (c) because Defendants have done substantial business in Milwaukee County and Plaintiffs' injuries occurred in Milwaukee County.

FACTUAL ALLEGATIONS

A. PCBs Are Toxic and Pose Substantial Risks to People and the Environment.

14. PCBs are a group of synthetic organic compounds that consist of carbon, hydrogen, and chlorine atoms. Generally, PCBs are categorized based on the number of chlorine atoms in their chemical structure (i.e., their degree of "chlorination"). PCBs range from a thin liquid to a waxy consistency. There are no known natural sources of PCBs. They have no known smell or taste, and some are volatile and can exist as a vapor in air.

15. Before being banned in 1977, PCBs entered the air, water, and soil during their manufacture and use. Industrial facilities that used PCBs in their processes or incorporated PCBs into their products have been a significant source of PCB contamination in the environment, including from accidental spills, leaks, and direct wastewater discharges.

16. Once released to the environment, PCBs do not readily breakdown and therefore remain in the environment for very long periods of time and are known to redistribute from one environmental media to another. PCBs in soil and water can volatilize into the air and be redeposited in other areas. PCBs in soils can be carried by and to water from combined sewer overflows (CSOs) and stormwater runoff.

17. Although different PCBs exhibit somewhat different physical properties, all PCBs have common properties that make them especially problematic pollutants:

- a. PCBs are lipophilic (i.e., they tend to be soluble in oils, fats, or lipids).

- b. PCBs are highly stable, durable, and resistant to thermal and chemical degradation.
- c. Most organisms cannot easily metabolize PCBs.

18. Although all PCBs are resistant to degradation, more heavily chlorinated PCBs tend to be more durable and therefore more persistent in the environment. Once PCBs enter living tissue, more heavily chlorinated PCBs tend to have longer half-lives than less heavily chlorinated PCBs.

19. PCBs create numerous environmental risks. PCBs can enter aquatic fauna such as zooplankton and bottom-grazing fish when they eat materials containing PCBs. These faunae readily absorb PCBs but do not easily metabolize them.

20. In part because PCBs are lipophilic, they tend to bioaccumulate, or build up, in living tissue and, like many other persistent pollutants, are also known to bio-magnify at higher levels of the food chain. Over its lifespan, a predator organism like a bird or carnivorous fish will eat numerous smaller organisms containing PCBs, and the PCBs will build up in that predator organism's tissue.

21. Today, humans are most often exposed to PCBs through ingestion of contaminated fish or shellfish but are also exposed via inhalation and dermal contact. Once PCBs enter the human body, they tend to build up in skin, fatty tissue, and the liver.

22. PCB contamination is one of the main reasons why federal, state, and local governments often advise Americans to avoid eating large quantities of certain types of fish, and fish and/or shellfish from certain PCB-impacted waters.

23. Chronic exposure to PCBs is known or suspected to cause a range of cancers including non-Hodgkin's lymphoma, breast cancer, liver cancer, gallbladder cancer, gastrointestinal cancers, pancreatic cancer, and skin cancer.

24. Chronic exposure to PCBs is also known or suspected to cause numerous non-cancer health effects including cardiovascular, dermal, endocrine, gastrointestinal, hepatic (liver), immune, neonatal, neurological, ocular, and reproductive harm.

B. Original Monsanto's Knowledge of PCB Risks to the Environment

25. The Swann Chemical Company ("Swann") started manufacturing PCBs in 1929. Original Monsanto (hereinafter referred to simply as "Monsanto") purchased Swann in or around 1935.

26. Most of Monsanto's PCB sales were marketed under the trade name "Aroclor," with the Aroclor products (in plural form, "Aroclors") categorized according to their degree of chlorination. Monsanto also sold PCBs—both alone and mixed with other chemicals—under other trade names like Pydraul, a line of hydraulic fluids.

27. Monsanto aggressively and successfully promoted and marketed Aroclors and other PCBs and PCB-containing products. Monsanto convinced its customers to incorporate PCBs into a wide range of commercial, household, and industrial products.

28. Monsanto learned about PCB risks early. Swann observed during the early 1930s that workers at its PCB manufacturing facility often developed dermatitis (skin irritation). Swann nevertheless marketed PCBs for a wide array of commercial, household, and industrial uses.

29. In around 1935, electricians working with a PCB laden product called Halowax reported severe chloracne (an acne-like skin irritation that can be caused by exposure to PCBs), similar to that reported by many of the workers involved in manufacturing the cables coated in

Halowax. Newspapers at the time reported that three workers making cables coated in Halowax died with of acute yellow atrophy of the liver. Halowax subsequently commissioned a study. Its author warned that PCBs could cause “systemic” toxic effects. Monsanto closely followed the Halowax workers’ deaths and the study.

30. By 1944, Monsanto had started to advise its salespeople that PCBs were toxic and could cause liver damage.

31. In the mid-1950s, Monsanto commissioned a study by researchers at the University of Cincinnati College of Medicine that exposed animals to Aroclor vapors for extended periods of time. This study raised concerns about PCB carcinogenicity.

32. In September 1955, Monsanto’s medical director, Dr. Emmet Kelly, authored an internal memorandum “summariz[ing]” “[Monsanto’s] position” about Aroclors. Kelly wrote, “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 [maximum allowable concentrations].”

33. Between 1956 and 1957, Monsanto tried to sell a product called Pydraul 150, a hydraulic fluid containing PCBs, to the U.S. Navy for use in submarines. The Navy resisted because it disfavored using toxic compounds like PCBs in confined environments.

34. Concerned about the potential risks of Pydraul, the Navy conducted an animal experiment exposing rabbits to the hydraulic fluid’s vapors. All the rabbits died from their exposure.

35. Monsanto nevertheless concealed the risks of Pydraul:

- a. When Monsanto learned that the Navy planned to publish the results of its Pydraul 150 experiment, the company encouraged the Navy to avoid referring to Monsanto trade names.
- b. In an April 1957 letter to the Standard Oil Company summarizing toxicity data for four Pydraul products, Monsanto wrote that “the toxicity report on Pydraul 150 indicates that it is practically innocuous when fed orally to rats. [...] In rabbit skin and eye irritation studies, Pydraul 150 was no more irritating than a 10% soap solution tested similarly.” Monsanto’s letter did not mention the Navy’s dead rabbits, nor the numerous other studies demonstrating PCB risks that the company had conducted, commissioned, or known about.

36. In a May 1957 technical bulletin about Aroclors, Monsanto included only a short section on toxicity. Monsanto claimed, “Animal toxicity studies and 20 years of manufacturing and use experience indicate that Aroclor compounds are not serious industrial health hazards.” However, at around the same time, one Monsanto scientist reviewing a strategic memorandum about a similar use of PCBs for use as an organic solvent or extender for DDT and other pesticides intended to be sprayed on crops, warned in an August 30, 1957 internal memorandum about the inherent dangers of promoting PCBs for this practice, noting that PCBs were toxic and suggested that their application to crops could pose legal risks.

37. Yet Monsanto failed to adopt safeguards, provide instructions, and issue warnings relating to PCBs and PCB-containing products. In many instances, Monsanto took affirmative action to downplay and/or conceal the mounting evidence about PCB dangers. For example:

- a. Monsanto advised customers that PCBs and PCB-containing products should be dumped or disposed in landfills (and was aware its customers followed that advice), even though Monsanto's own research had already demonstrated that this was not an appropriate means of disposal.
- b. In 1962, Monsanto represented to the U.S. Public Health Service that "[the company's] experience and the experience of our customers over a period of nearly 25 years, has been singularly free of difficulties."

38. In 1963, Monsanto received additional empirical evidence that PCBs were—as expected from its inertness and resistance to degradation—highly persistent in the environment. In 1939, Aroclors had been applied to test plots at the University of Florida, Gainesboro to determine whether the compounds could be used for termite-proofing. Monsanto documents from 1963 indicate that a researcher revisiting those sites observed “visual evidence of the presence of Aroclor.”

39. In 1966, Søren Jensen and Gunnar Widmark of the University of Stockholm published a landmark study about PCBs. Jensen and Widmark had set out to identify the prevalence of DDT and other pesticides in the environment. However, Jensen and Widmark identified unexpected compounds that they eventually determined to be PCBs in fish, sea birds, conifer needles, and human fat tissue. In their study, Jensen and Widmark expressed concern that PCBs were spreading widely throughout the environment due to high production volumes, their durability, and their tendency to bioaccumulate and bio-magnify. The Jensen and Widmark study prompted substantial internal conversations and correspondence in Monsanto.

40. Despite these red flags, in November 1967 Monsanto's board approved expanding production at two PCB manufacturing facilities.

41. In early 1968, PCBs caused a mass poisoning in Japan. PCBs leaked from a heat exchanger used in the processing of rice bran oil, contaminating that oil with PCBs. This oil was both consumed directly and fed to poultry.

42. Although the PCBs released in the Japanese poisoning were not Monsanto's, its own internal memoranda discussed the mass poisoning because its PCBs were also used inside heat exchangers in food processing plants. Although Monsanto had concluded it was "a matter of time until the regulatory agencies will be looking down [its] throats," Monsanto did not withdraw its PCB-containing products from this use. Instead, Monsanto planned to put customers' "mind[s] at ease . . . by playing down the medical reports."

43. In December 1968, University of California, Berkeley researcher R.W. Risebrough and others published a landmark study about PCBs in the publication *Nature* that concluded PCBs were toxic, spread easily and widely once released into the environment, and posed a significant threat to human health and the environment.

44. The manager of Research and Development of Monsanto's Organics Division, W.R. Richard, wrote in an internal memorandum: "Either [Risebrough's] position is attacked and discounted or we will eventually have to withdraw product from end uses which have exposure problems." Rather than withdraw its products, Monsanto chose to respond combatively.

45. For example, Monsanto issued a press release about the Risebrough article that cast doubt on whether the chemicals Risebrough identified were PCBs, even though the company's internal memoranda acknowledged they were. Monsanto also claimed it was surprised that PCBs

were being widely released and dispersed into the environment. Monsanto made similar representations to the U.S. government.

46. Around the same time, Monsanto retained University of Illinois researcher Robert Metcalf to assess the PCB problem. Metcalf warned that PCBs were being released to the environment in massive quantities, that these PCBs were circulating and transporting in the environment, and “there is an important environmental quality problem involved in wastes of PCB.”

47. Metcalf advised that “the evidence regarding PCB effects on environmental quality is sufficiently substantial, widespread, and alarming to require immediate corrective action on the part of Monsanto. The defensive measures presently underway will do little if anything to refute the evidence already presented.”

48. Monsanto nevertheless continued to pursue greater PCB sales. For example, in April 1969, Monsanto’s president requested its board of directors to approve \$1.1 million in appropriations to expand the production of solid Aroclors at its Anniston, Alabama facility. These solid Aroclors were more heavily chlorinated PCBs that Monsanto knew to be more dangerous.

49. In August 1969, Monsanto held a meeting of its “PCB Committee.” Handwritten notes from the meeting read, “Subject is snowballing.” The handwritten notes identified three “Alternatives”: (1) “go out of business”; (2) “sell the hell out of them as long as we can and do nothing else”; and (3) “try to stay in business in controlled applications – control contamination levels.”

50. In or around September 1969, Monsanto formed an Aroclor Ad Hoc Committee. At its first meeting, the Ad Hoc Committee “[a]greed to” three “[o]bjectives”: (1) “[p]ermit continued sales and profits of Aroclors”; (2) “[p]ermit continued development of uses and sales”;

and (3) “[p]rotect image of Organic Division and of the Corporation.” None of Monsanto’s three “objectives” involved protecting the public or the environment from the dangers of PCBs.

51. Monsanto’s Aroclor Ad Hoc Committee produced voluminous reports and correspondence. These reports and correspondence showed the Committee knew PCBs were being released to the environment in massive volumes, and they had become a truly global contaminant.

52. The Committee knew PCBs had been tied especially closely to aquatic organisms and birds that consumed aquatic organisms. The Committee knew PCBs were toxic to humans and animals, PCBs could be harmful even at low concentrations, and PCBs were contaminating human food.

53. The Committee knew the company’s products would be scrutinized by regulators and the public but the Committee pushed Monsanto to prolong PCB sales for as long as possible because they were profitable.

54. In or around 1970, Monsanto achieved record production and sales of PCBs and, as part of its strategy to prolong PCB sales at the public’s expense, Monsanto misled the public by representing that PCBs were not being released into the environment at high rates, that PCBs were not being used in household products, and that PCBs were not very toxic.

55. For example, in April 1970, Monsanto issued a press release “repl[ying] to [a] charge that PCB threatens the environment” by U.S. Representative William F. Ryan. Monsanto insisted that “PCB is not a household product,” despite the company’s knowledge that Aroclors were used in carbonless copy paper and numerous other household products.

56. Monsanto also suggested that PCBs were mostly used in “closed systems” (i.e., systems from which PCBs could not escape) despite its knowledge that PCBs were used in open

systems, and its knowledge that PCBs were routinely released even from so-called “closed systems.”

57. In 1970, Monsanto finally decided to discontinue production of Aroclors 1254 and 1260, which were the most heavily chlorinated Aroclors that were widely distributed. By this point, Monsanto had known for many years that more chlorinated PCBs were especially problematic pollutants. A February 1970 interoffice memorandum provided talking points for company representatives’ conversations with consumers of these Aroclors.

58. Monsanto stressed to its representatives that the company had decided not to recall these heavier Aroclors: “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.”

59. Monsanto suggested that customers should be grateful: “We certainly have no reason to be defensive or apologetic about making this change. . . . [O]ur customers should commend us”

60. Despite Monsanto’s best efforts, a scandal occurred in 1971. Large volumes of poultry feed marketed in the southeastern United States were found contaminated with PCBs. In turn, this feed had contaminated numerous chickens and chicken eggs. Also in the early 1970s:

- a. Monsanto’s customers started to express more and more concerns about PCBs.
- b. Monsanto learned about long-term animal studies of chronic PCB exposure that further demonstrated that the chemicals were toxic.

- c. Monsanto learned about detections of PCBs in cow milk traced to Aroclor-containing paint in feed silos.
- d. Further research by Monsanto identified PCBs in a wide range of samples including in human tissue.

61. In September 1971, the United States formed an interagency task force to review existing data about PCBs and coordinate further government investigations. The New York Times published an article about the task force's formation. The newspaper reported, "The Monsanto Company of St. Louis, which is the only American manufacturer of PCB, has been conducting a two-year study of the effects of the chemical on rats and dogs. A company spokesman said that no ill effects had yet been detected." However, Monsanto's contemporaneous internal memoranda suggested that Monsanto's experiments on rats, dogs, and chickens had demonstrated adverse effects, especially reproductive harm in rats and chickens.

62. In May 1972, the federal task force concluded that "PCB's [sic] were highly persistent, could bioaccumulate to relatively high levels in fish and could have serious adverse effects on human health." The task force recommended discontinuing "all PCB uses except in closed electrical systems."

63. Over the next few years, the U.S. government continued to sample soils, waters, birds, and fish across the United States. PCBs were found to be ubiquitous throughout the United States, including in the Milwaukee Estuary. Federal and other researchers also developed even more evidence in animal experiments that PCBs were toxic and carcinogenic.

64. Even as Monsanto came under a regulatory microscope, the company did not relent in its efforts to mislead the public. For example, in 1975, Monsanto manipulated a study it had commissioned by Industrial Biotest Laboratories ("IBL"). IBL had written a report about a two-

year Aroclor feeding study involving rats. IBL had concluded that Aroclors were “slightly tumorigenic.” Monsanto asked IBL to change this language to “does not appear to be carcinogenic.” IBL complied.

65. Ultimately, Monsanto knew the time window for selling PCBs was ending.

66. In December 1975, Monsanto’s PCB Study Group addressed in a memorandum the question, “Is the adverse impact now, or in the future, likely to be greater than the benefits derived from staying in the business?” Focusing solely on its own interests and disregarding the adverse effects of its products on public welfare, the PCB Study Group concluded, “in answer to the question at hand, the negative impact on Monsanto’s image will, indeed, exceed the benefits derived from staying in the business.”

67. Knowing that a PCB ban was imminent, the PCB Study Group recommended that Monsanto should phase out PCBs before it was forced to do so. “Principally, Monsanto must not be viewed as being forced into a decision to withdraw from PCB manufacture by either government action or public pressure. Rather, key audiences must perceive Monsanto as having initiated responsible action”

68. In early 1976, Monsanto, consistent with this recommendation, announced the company planned to phase out its production of PCBs. Several weeks later, in March 1976, the Toxic Substances Control Act (“TSCA”) passed the Senate. TSCA was signed into law in October 1976 and imposed a manufacturing ban on PCBs effective on January 1, 1979.

69. Before Monsanto phased out PCB manufacture, and since it began manufacturing them, Monsanto made, promoted, marketed, distributed, and sold about 1.4 billion pounds of PCBs for use in a wide range of applications, including capacitors and transformers, heat transfer and hydraulic fluids, flame retardants, inks, adhesives, paints, pesticides, plasticizers, surface coatings,

sealants and caulking compounds, wire insulators and metal coatings. The U.S. EPA has stated it believes that there was potential widespread use of PCB-containing building materials in schools and other building built or renovated between 1950 and 1979.

70. Approximately 99% of all PCBs sold in the United States were made by Monsanto and, despite its knowledge that PCBs posed a serious risk to health and the environment, and despite the availability of safe alternative products, Monsanto failed to warn customers, users, the public and Plaintiffs about those risks, and they failed to take any other appropriate precautionary measures to prevent or mitigate PCB contamination of the environment. Instead, Monsanto falsely and misleadingly promoted PCBs as appropriate for widespread use.

71. Monsanto knew that because of its inadequate warnings and instructions about spills and leaks, and because of its marketing and promotion of PCBs for unsuitable applications where they would inevitably be spilled or leaked, PCBs and products containing the chemicals were being spilled and leaked into the environment in large quantities.

72. Monsanto possessed vastly superior knowledge, resources, experience, and other advantages, in comparison to any person or governmental entity, concerning the manufacture, distribution, nature and properties of PCBs.

73. By virtue of its tremendous economic power and analytical resources, including employment of chemists, engineers, and health professionals, Monsanto was in a position to know, identify, and confirm the threat PCBs posed to Plaintiffs' property, resources and residents.

74. In addition, by virtue of this superior knowledge, and/or by virtue of its partial and incorrect statements regarding the nature of PCB impacts, Monsanto had a duty to disclose the truth and to act in accordance with the truth about PCBs.

75. Monsanto failed to take reasonable steps to eliminate or reduce the dangers posed by its PCBs. Instead, it concealed and misrepresented those dangers to consumers, the public and Plaintiffs.

C. PCBs Have Caused Widespread Contamination in the District, the City, and the Milwaukee Estuary.

76. At all times relevant to this Complaint, Monsanto was or should have been aware that PCB contamination and injury to Plaintiffs' property and natural resources was inevitable, due to the persistence of PCBs in the environment, and the normal and foreseen use and disposal of PCBs in industrial processes and commercial products manufactured, distributed, sold, and used within the District and the City.

77. PCBs were released into the environment within and near the District and the City from a wide range of sources. In addition to releases from industrial uses, these sources include, but are not limited to, building and construction materials like caulk, roadway paint, dielectric fluid in electrical transformers, and fluorescent light ballasts. Once released, PCBs have cycled and transported within and between land, air, and water in and near the District and the City.

78. As a result, PCBs are one of the primary contaminants of concern in the Milwaukee Estuary, which is one of 31 U.S. based Areas of Concern (AOC) in the Great Lakes region under the 1987 Great Lakes Water Quality Agreement.

79. The original Milwaukee Estuary AOC included:

- a. The lower 3.1 miles of the Milwaukee River downstream of the former North Avenue Dam;
- b. The lower 3 miles of the Menomonee River downstream of 35th Street;
- c. The lower 2.5 miles of the Kinnickinnic River downstream of Chase Avenue; and

- d. The inner and outer Harbor and nearshore waters of Lake Michigan, bounded by a line extending north from Sheridan Park in the city of Cudahy to the City of Milwaukee's Linnwood water treatment plant.

80. In 2008, the Milwaukee Estuary boundary was expanded to include the following:

- a. Cedar Creek downstream from Bridge Road to the confluence with the Milwaukee River;
- b. The Milwaukee River and Lincoln Creek from the confluence with Cedar Creek to the North Avenue Dam;
- c. The Little Menomonee River from Brown Deer Road to the confluence with the Menomonee River, and the Menomonee River downstream from confluence with the Little Menomonee River to 35th Street.

81. Historical activities throughout this predominantly industrial and urbanized watershed have resulted in accumulation of PCBs in the Milwaukee Estuary.

82. Cleanup in this area is important to the City's economy and the communities within the District's territory. Cleanup and restoration are vital to enhance recreational use of the Milwaukee Estuary, thereby boosting tourism and community engagement.

83. Examples of efforts to clean up PCB contamination in the Milwaukee Estuary include the following activities funded by U.S. EPA and the Wisconsin Department of Natural Resources (WDNR):

- a. Removal of over 119,000 cubic yards of PCB contaminated sediment from what is known as the Lincoln Creek area between Green Bay Avenue and the Western Oxbow of the Milwaukee River,

- b. Removal of over 52,000 cubic yards of contaminated sediment in the Milwaukee River from the railroad bridge north of Lincoln Park, down to the former Estabrook Dam fixed crest spillway and the Eastern Oxbow of the river.
- c. Removal of over 170,000 cubic yards of PCB contaminated sediment in the Kinnickinnic River between Kinnickinnic Avenue and Becher Street.

84. These contaminated sediments have been disposed of in the existing Combined Disposal Facility (“CDF”) located north of the Lake Express ferry dock.

85. The CDF, which is operated by the Port of Milwaukee, is nearly at capacity and does not have space available for sediment that will still need to be removed from the rivers as part of the Milwaukee Estuary AOC initiative.

86. A new Dredged Material Management Facility (DMMF) is being constructed in the Milwaukee Harbor by the District at a currently estimated cost to the District of over \$100 million. Construction is expected to take three years. Once constructed, the DMMF will be owned and operated by the Port of Milwaukee, which will then be responsible for ongoing operations and maintenance.¹

87. When completed, the DMMF will provide safe, secure containment for millions of cubic yards of contaminated sediment removed from the Milwaukee Estuary, including PCB contaminated sediments less than 50 ppm, which is the level above which off-site disposal at a licensed hazardous waste facility is required.

¹ U. S. EPA will be responsible for the dredging of the sediments and pumping them into the DMMF and it is expected to take an additional three years to complete that work.

88. In addition to being a major contaminant in the Milwaukee Estuary, PCBs have been and continue to be found in numerous other locations throughout the Milwaukee area, imposing costs on the District and the City.

89. For example, the District recycles the biosolids from its wastewater treatment plant as a commercially available fertilizer under the trade name Milorganite. In June 2007, the District detected PCBs during routine quality testing at levels not previously seen before and in excess of 50 ppm.

90. According to a Health Consultation report prepared by Wisconsin Department of Health Services, the PCB-contaminated Milorganite was approximately 86% Aroclor 1248, with the remainder being Aroclor 1260.

91. By the time PCBs were detected, approximately 11 tons of PCB-contaminated Milorganite had been used in parks and school athletic fields throughout Milwaukee County. The areas where PCB-contaminated Milorganite was believed to have been spread were subsequently closed pending sampling and analysis and impacted areas remediated.

92. Lost sales of Milorganite, disposal of contaminated product and cleanup of the impacted fields cost the District nearly \$5 million, and the District continues to incur increased PCB testing costs of approximately \$52,000 per year to ensure that Milorganite is safe.

93. Following its discovery of PCB in Milorganite, the District immediately suspended all sewer cleaning operations until testing could be performed to determine potential sources. One source of the PCBs was traced to a storm sewer near 30th Street and Auer Avenue that had been cleaned on or about June 10, 2007, by an unsuspecting city crew. The toxic load of PCBs flowed downstream to the regional sewer and to the District's Jones Island sewage treatment plant.

94. In 2008, testing indicated the presence of PCBs above 50 ppm in the District's Basin H Metropolitan Interceptor Sewer (MIS) at a location proximate to the former Milwaukee Die Casting Facility located at 4132 N. Holton in the City of Milwaukee. The then property owners were ordered to disconnect the plant from the city sewer, which action was undertaken by Pharmacia pursuant to private agreements between it and the then owner.²

95. U.S. EPA subsequently became involved and determined that, in the past, PCB laden water, sewage and hydraulic fluids collected in pipes beneath the buildings and drained to an outdoor sump that discharged to the city sewer. In 2013, U.S. EPA and Pharmacia entered into an Administrative Order on Consent ("AOC") with U.S. EPA, whereby Pharmacia agreed to undertake removal actions required by U.S. EPA, including removal and off-site disposal of PCB wastes. However, the removal actions required by U.S. EPA did not include removal of PCBs from the City's sanitary sewer or the District's Basin H sewer.

96. In furtherance of these cleanup efforts and to secure access, in 2012, the City agreed to foreclose on the tax-delinquent Milwaukee Die Casting parcel and have RACM acquire the property. RACM then entered into a "Remediation, Long-Term Care and Access Agreement" with Pharmacia (and Fisher), to facilitate Pharmacia performing remedial activities required under the AOC.³

² According to the U.S. EPA records, in 1969 Original Monsanto took ownership of a company called Fisher Controls Company, Inc., as a subsidiary. In 1974, Fisher formed a new corporation called Milwaukee Die Casting Company, Inc., to acquire the assets of Milwaukee Die Casting Company. Then, in 1992, Monsanto sold the stock of Fisher Controls International, Inc., to Emerson Electric Co., and agreed to indemnify Emerson and Fisher for certain losses related to the Milwaukee Die Casting site. In 2000, Monsanto changed its name to Pharmacia Corporation after it merged with Pharmacia & Upjohn, Inc. Pharmacia Corporation later changed to Pharmacia LLC.

³ City Ordinance 308-22 generally requires the City to conduct environmental assessments prior to acquiring property and properties with known or suspected of contamination cannot be acquired without Council approval. In its implementation of this Ordinance, the City maintains what it refers to as the "do not acquire" or "DNA" list. The Council approved this particular tax foreclosure acquisition despite the known PCB contamination in furtherance of its blight elimination authority and to assist with implementation of the AOC. Under the tax lien foreclosure statutes, this resulted in the City's payment of delinquent property taxes owed to other governmental entities and, due the residual PCB contamination and use restrictions, the City was only able to sell the parcel for \$1.00. The loss of land value and taxable revenue due to the PCB contamination at this site goes back many years.

97. Despite Pharmacia's obligations to clean up the Milwaukee Die Casting site, those efforts have not extended to cleanup of residual PCB contamination in the City and District owned sewers.

98. DPW has incurred approximately \$400,000 in connection with cleaning the City segment of the sewer, which involved the treatment of liquid waste and disposal of the contaminated sediment.⁴

99. The District is now in the midst of removing the PCB contaminated sediments from its Basin H sewer, which must be done before it can do any other sewer cleaning or repair projects in the area. The work began several years ago, with the approval of a Risk Based Work Plan by the EPA. The District obtained bids for the work in 2019, however the low bidder was unable to secure Performance and Payment Bonds so new bids were solicited. In March 2022, the District entered a contract with a contractor to perform the work at a cost of \$10,524,195.25.⁵ This work is ongoing.

100. The discovery of PCBs in District facilities and sewers have been just the tip of the proverbial iceberg when it comes to legacy PCB contamination in sewers. Additional sewer impacts include:

- a. In 2009, PCBs were identified in the brick sewer below Mitchell Park at levels in excess of 50 ppm. An interim removal action was conducted as part of the effort to stabilize the sewer prior to construction of the nearby Canal Wet Weather Relief Sewer; however PCBs remain in the

⁴ As part of the Remediation, Long-Term Care and Access Agreement with Pharmacia, RACM did covenant not to sue Pharmacia for certain matters, including claims arising from contamination at, on, under, or from the Milwaukee Die Casting Site. Nothing in this Complaint is intended to be a claim by RACM for any damages RACM has incurred.

⁵ The District does have insurance with CHUBB that is covering some of these costs, but there is a self-insured retention of \$250,000 and the overall project costs will exceed the insurance limits. As set forth above, CHUBB is named as an involuntary plaintiff pursuant to § 803.03(2)(a), Wis. Stats., with respected its rights of subrogation.

brick sewer at levels that are difficult to assess due the distance between manholes. The interceptor pipe received flows from the historic rail yards north of the park in the Menomonee River Valley.

- b. Testing in 2008 identified PCBs in a 39" sewer line located near 56th Street and the Veteran's Administration at levels at or near 50 ppm. Approximately 1,215 feet of pipe are deemed at risk.
- c. Testing in 2009 identified PCBs in the Lincoln Avenue MIS near W. Lincoln Avenue and S. 35th Street. Recent sampling upstream from that point in 2023 continues to show PCB impacts and the District is incurring costs in 2023 to remove these PCBs from this sewer segment.
- d. Testing in 2012 confirmed PCB contamination in the 24-inch MIS in S. Muskego Avenue and in the 36-inch MIS in W. Bruce Street from S. Muskego Avenue to S. 12th Street, with approximately 2,550 feet of pipe deemed at risk.
- e. Testing in 2018 confirmed PCB contamination in the 84-inch MIS in N. 37th Street, with approximately 675 feet of pipe deemed at risk.

101. The District does not have remediation estimates for these locations yet. And because these locations are directly connected to the City's sewers, PCB contamination exists in those upstream City sewers. Neither the District nor the City have investigated these upstream sewer locations and costs to remove any PCB contamination are currently unknown.

102. Legacy PCB contamination is not limited to District and City sewers but has significantly impacted other public works projects. For example:

- a. In 2015, the District purchased a number of properties at 4350 N. 35th Street for use in a flood management project in light of severe flooding in that area of the City. The property is contaminated with PCBs. The District has already disposed of 810 cubic yards of PCB contaminated materials at a cost of \$150,000.00. The District is also aware that additional PCB contamination is present at this site, but it has not been fully delineated. Additional costs are anticipated to be at least another \$150,000.00 and may be much higher.
- b. In 2021, the District identified PCB contamination in soil and sediment in the area of the District's Kinnickinnic River Flood Management Reach 3 project. The contamination has not yet been fully delineated and costs to remove the contamination are currently unknown.
- c. In 2022, as part of a project to dredge the Jackson Park lagoon sediments and lower the water surface elevation to provide flood storage benefits on the Kinnickinnic River, the District identified PCB contamination within the dredged sediment. The contamination has not been fully delineated and costs to remove the contamination are currently unknown.
- d. In 2020, the District identified PCB contamination in the soils on a parcel the District acquired in 2019 located at 35th Street and Hayes. The District intends to excavate the site to lower the ground elevation 15-20 feet to create a flood storage detention basin to reduce flood risk

on the Kinnickinnic River. The contamination is not fully delineated and costs to remove the contamination are currently unknown.

- e. In 2018 and 2019, the District identified PCB contamination in the soils along the open channel section of the 43rd Street Ditch located south of Lincoln Avenue west of the City's sanitation lot. The land is owned by the City and the District has a permanent easement for the 43rd Street Ditch. The District plans to remove the concrete and widen the channel within this section of the 43rd Street Ditch. The work will include excavation of the PCB impacted soils within the slopes of the channel. The contamination has not been fully delineated and costs to remove it are currently unknown.

103. The City has also incurred hundreds of thousands of dollars in efforts to investigate PCB contaminated properties, many (or all) of which are tax-delinquent parcels that are a blight on the community. Locations and known costs include:

- a. 201 W. Oklahoma Avenue--\$230,000
- b. 3025 W. Hopkins Street--\$300,000
- c. 3533 N. 27th Street--\$200,000
- d. 3456 N. Buffum Street--\$30,000
- e. S. Marina Drive storm sewer adjacent to Grand Trunk, which is part of the Milwaukee Estuary AOC--\$50,000.

104. The City has also spent or contributed over a million dollars in remediation projects involving PCB contamination. Locations and known costs include:

- a. 3025 W. Hopkins--\$750,000

- b. 3533 N. 27th Street--\$200,000
- c. 3456 N. Buffum--\$90,000

105. In addition, the City has created numerous Tax Increment Districts or provided Brownfield grants that include millions of dollars of funding to address PCB contamination. Project locations include:

- a. 3839 W. Burnham Street (Stadium Business Park),
- b. 1320 S. 1st Street (Freshwater Plaza),
- c. 1111 N. Vel R. Phillips Avenue,
- d. 700-704 W. National Avenue,
- e. 2758 N. 33rd Street, and
- f. 550 W. Juneau Street

106. The City is also subject to a Municipal Separate Storm Sewer System (MS4) Permit issued by the Wisconsin Department of Natural Resources. In furtherance of its obligations under the MS4 permit, the City has committed approximately \$150,000 toward the Marina Drive storm sewers project adjacent to Grand Trunk, which is also part of the Milwaukee Estuary AOC. Further PCB related monitoring, investigation and remediation projects are likely to be undertaken in the future in furtherance of the City's MS4 Permit obligations.⁶

107. The City also anticipates millions of dollars in future costs to investigate and remediate numerous other PCB contaminated sites in the City, potentially including dozens of

⁶ By letter dated July 18, 2022, the City timely opted out of the Monsanto Class Action Settlement in *City of Long Beach, et al., v. Monsanto Company, et al.*, Case No. 1:16-CV-03493 (C.D. Cal-Western Division). The approved Class included MS4 permit holders adjacent to PCB impaired waters. The City was designated as part of the Monitoring Class, under which it was slated to receive just \$32,024.47 out of a total settlement of \$550 million, in exchange for a release of all its possible PCB contamination related claims. The District was never part of the proposed Class Settlement because it does not hold a MS4 Permit.

properties that remain on the “do not acquire” (“DNA”) list due to the likely presence of PCB contamination, resulting in millions in lost property tax revenue. Sites with suspected PCB contamination include former uses for auto repair (hydraulic fluids), machining, metal shops, gasket manufacturing, plating and sheet metal manufacturing, transformer manufacturing, casting, plating and polishing, among other uses.

108. The City’s reluctance to foreclose upon and/or investigate DNA properties with suspected PCB contamination due to lack of funding results in many of these DNA properties remaining blighting influences in mostly low-income neighborhoods, which the City views as a significant Environmental Justice issue.

109. The City also owns other municipal properties where PCBs are known or will likely present contamination issues, including PCB laden hydraulic fluids present in elevators and hoists, and PCB-containing building materials in schools and other public buildings built or renovated between 1950 and 1979 when PCB-containing building materials were widely used in schools and other public buildings. These sites have not been investigated and potential costs are not known at this time.

110. Plaintiffs may also incur additional costs to limit PCB-laden stormwater and dry-weather runoff from flowing into the Milwaukee Estuary. These actions include, and/or may in the future include—among other things:

- a. Testing and monitoring;
- b. The installation of “green infrastructure” to capture PCBs in runoff;
- c. Measures to control PCB discharges when structures with PCBs are demolished;

- d. Identification of PCB-contaminated sites and abatement of contamination at those sites to prevent contaminated runoff;
- e. Modification to maintenance and waste disposal operations to minimize or capture sediment carried in runoff;
- f. Costs associated with coordinating Milwaukee Estuary AOC projects; and
- g. Ongoing operating and maintenance for green infrastructure, capture devices, and/or other abatement devices/infrastructure/mechanisms.

111. Plaintiffs already have incurred substantial costs to investigate, remediate and mitigate the impacts of PCB contamination, including efforts to limit PCB discharges into the Milwaukee Estuary. Plaintiffs will continue incurring such costs for decades into the future.

112. Monsanto has caused this widespread PCB contamination in the District and the City by designing, manufacturing, promoting, selling and distributing PCBs; by failing to adequately investigate and test PCBs to ensure that they would not cause harm to the public or the environment; by failing to adopt measures or product designs that could have reduced or eliminated the known dangers of PCBs; and by concealing and misrepresenting the adverse health and environmental impacts of PCBs.

113. Monsanto knew that its sale of PCB for household and industrial uses would result in widespread environmental contamination that government bodies, like Plaintiffs, would need to monitor, assess, and remediate at some point in the future, particularly those responsible for the health and wellbeing of cities, like Milwaukee, which developed into population and industrial centers during the years Monsanto was engaging in widespread sale of PCBs in the 1950s and 60s.

Monsanto could have, but did not, warn purchasers of PCBs, or the public, of the risks PCBs posed to humans and the environment.

114. Instead, it left consumers of its product and, ultimately, the public to assess and discover the risks and threats posed by PCB and to undertake efforts to remediate existing PCB contamination as well as take a wide range of actions and bear associated costs to curb PCB discharges into waterways like the Estuary.

CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION
(Continuing Public Nuisance)

115. Plaintiffs incorporate by reference each allegation contained above.

116. Buildings, roadways, infrastructure, inland waters, flora, and fauna in the District and the City are contaminated with PCBs.

117. The Milwaukee Estuary's sediments, waters, flora, and fauna also are contaminated with PCBs. This contamination includes sediments, waters, flora, and fauna within the Plaintiffs' geographic boundaries.

118. PCB contamination of the District and the City, and the Milwaukee Estuary is a public nuisance that substantially and unreasonably interferes with rights common to the public, including a substantial number of the District and the City residents. The PCB contamination has harmed a range of living organisms, threatens the health of people who eat fish or shellfish from the Milwaukee Estuary, and interferes with the public's right to use the waterways for a variety of beneficial uses in addition to fishing.

119. PCB contamination of the District and the City, and the Milwaukee Estuary is severe, pervasive, and costly such that it constitutes a public nuisance by virtue of its substantial

and unreasonable interference to the public's use and enjoyment of cultural, economic, environmental, and socially valuable resources.

120. Monsanto, by acting or failing to act, created this public nuisance or permitted it to exist. Monsanto's conduct amounted to affirmative, knowing action to create the nuisance:

- a. Monsanto made about 99% of the PCBs ever used in the United States.
- b. Monsanto made virtually all the PCBs that contaminate the District and the City, and the Milwaukee Estuary today.
- c. Despite knowing about their dangers, Monsanto wrongfully promoted and marketed PCBs and PCB-containing products for a wide range of commercial, household, and industrial uses and applications.
- d. Monsanto made false or misleading statements about the dangers of PCBs and PCB-containing products, the prevalence of PCBs in products, the likelihood of PCB releases, and the prevalence of PCBs in the environment.
- e. Monsanto also concealed the dangers of PCBs and PCB-containing products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto's concealment and false or misleading statements increased PCB sales, generating profits for the company at the expense of creating this nuisance.
- f. Monsanto manufactured, promoted, marketed, distributed, and sold PCBs and PCB-containing products without providing adequate warnings and instructions about how they should be properly used, handled, and disposed. Monsanto also directed PCB customers and

users to use, handle, and dispose of PCBs in improper ways that caused PCBs to be released into the environment.

- g. Despite knowing that more heavily chlorinated PCBs were more problematic pollutants, Monsanto nevertheless promoted, marketed, distributed, and sold them aggressively.
- h. Monsanto consciously decided not to recall or take back PCBs and PCB-containing products or take other steps to mitigate the public nuisance.
- i. Monsanto's actions and failures to act caused PCBs to contaminate the District and the City, and the Estuary, at levels that pose unacceptable risks to human health and the environment.

121. Monsanto's actions and inactions were a cause of the PCB contamination in the District, the City and the Milwaukee Estuary, the presence of which poses an unacceptable risk to human health and the environment, and the seriousness of the harm caused outweighs any social utility of Monsanto's conduct.

122. The District and the City did not consent to Monsanto's creation of this continuing public nuisance and the harms associated with this public nuisance are reasonably abatable.

123. As a direct and proximate result of Monsanto's acts and omissions, Plaintiffs have incurred and continue to incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs related to PCB contamination in the District, the City and the Milwaukee Estuary.

124. As a further direct and proximate result of Monsanto's acts and omissions, Plaintiffs have sustained and will sustain other substantial expenses and damages, including damages for

loss of use and enjoyment, for which Defendants are liable because each has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

SECOND CAUSE OF ACTION

(Continuing Private Nuisance)

125. Plaintiffs incorporate by reference each allegation contained above.

126. PCB contamination caused by Monsanto constitutes an ongoing private nuisance because it substantially and unreasonably interferes and obstructs the Plaintiffs' use and enjoyment of their property, including but not limited to the following:

- a. The District and the City own or control combined sewers, buildings, roadways, other infrastructure, inland waters, and land that are contaminated with PCBs.
- b. PCB contamination has required the District and the City to respond with measures to curtail PCB discharges from this property.
- c. The City owns municipal stormwater systems that receive PCB-laden water and solid materials (such as sediments).
- d. PCB-laden sediment and other solid materials deposit and/or accumulate in the District and the City sewer systems.
- e. PCB contamination of the sewer systems has prevented the District and the City from freely using these systems as designed without taking expensive remedial measures such as cleaning, upgrades, retrofits, and upstream source controls.
- f. The District and the City own, lease, occupy, or control land that they have had to, or will have to, use to construct remedial infrastructure to address PCB contamination.

127. Each of these interferences is substantial and unreasonable, so as to be annoying, disturbing, offensive, or inconvenient to the ordinary person.

128. Monsanto, by acting or failing to act, created this private nuisance or permitted it to exist. Monsanto's conduct was intentional and unreasonable, or – at minimum – unintentional but negligent or reckless:

- a. Monsanto made about 99% of the PCBs ever used in the United States.
- b. Monsanto made virtually all the PCBs that contaminate the District and the City, and the Estuary today.
- c. Despite knowing about their dangers, Monsanto wrongfully promoted and marketed PCBs and PCB-containing products for a wide range of commercial, household, and industrial uses and applications.
- d. Monsanto made false or misleading statements about the dangers of PCBs and PCB-containing products, the prevalence of PCBs in products, the likelihood of PCB releases, and the prevalence of PCBs in the environment.
- e. Monsanto also concealed the dangers of PCBs and PCB-containing products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto's concealment and false or misleading statements increased PCB sales, generating profits for the company at the expense of creating this nuisance.
- f. Monsanto manufactured, promoted, marketed, distributed, and sold PCBs and PCB-containing products without providing adequate

warnings and instructions about how they should be properly used, handled, and disposed.

- g. Monsanto also directed PCB customers and users to use, handle, and dispose of PCBs in ways that caused PCBs to be released into the environment.
- h. Monsanto aggressively promoted, marketed, distributed, and sold its more heavily chlorinated PCBs, despite knowing that they were more problematic pollutants.
- i. Even after learning about PCB risks, Monsanto chose not to, or otherwise failed to, thoroughly investigate them.
- j. Monsanto consciously decided not to, or recklessly or negligently failed to, recall or take back PCBs and PCB-containing products or take other steps to mitigate the nuisance.

129. Monsanto's actions and inactions are a cause of PCB contamination in the District, the City and the Milwaukee Estuary, pose unacceptable risks to human health and the environment, and the seriousness of the harm outweighs any social utility of Monsanto's conduct.

130. The Plaintiffs did not consent to Monsanto's creating this private nuisance and the harms associated with this continuing private nuisance are reasonably abatable.

131. As a direct and proximate result of Monsanto's acts and omissions, Plaintiffs have incurred and continue to incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs related to PCB contamination in the District, the City, and the Estuary.

132. As a further direct and proximate result of Monsanto's acts and omissions, Plaintiffs have sustained and will sustain other substantial expenses and damages, including damages for

loss of use and enjoyment, for which Defendants are liable because each has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

133. Monsanto acted with malice, oppression, or fraud as required for an award of punitive damages. As alleged elsewhere, Monsanto deliberately misled buyers of PCBs and PCB-containing products, users of PCBs and PCB-containing products, governments, and the public. Monsanto also concealed the dangers of PCBs. Monsanto knowingly caused injury to the public welfare to safeguard its own profits.

THIRD CAUSE OF ACTION

(Continuing Trespass)

134. Plaintiffs incorporate by reference each allegation contained above.

135. Monsanto caused PCBs to enter and contaminate the District's and the City's property. Monsanto's conduct that caused this entry was intentional and unreasonable, or unintentional but negligent or reckless:

- a. Monsanto made about 99% of the PCBs ever used in the United States.
- b. Monsanto made virtually all the PCBs that contaminate the District and the City, and the Estuary today.
- c. Despite knowing about their dangers, Monsanto wrongfully promoted and marketed PCBs and PCB-containing products for an extremely wide range of commercial, household, and industrial uses and applications.
- d. Monsanto made false or misleading statements about the dangers of PCBs and PCB-containing products, the prevalence of PCBs in

products, the likelihood of PCB releases, and the prevalence of PCBs in the environment.

- e. Monsanto also concealed the dangers of PCBs and PCB-containing products, the likelihood of PCB releases, and the prevalence of PCBs in the environment.
- f. Monsanto's concealment and false or misleading statements increased PCB sales, generating profits for the company at the expense of injury to others, including Plaintiffs.
- g. Monsanto manufactured, promoted, marketed, distributed, and sold PCBs and PCB-containing products without providing adequate warnings and instructions about how they should be properly used, handled, and disposed.
- h. Monsanto also directed PCB customers and users to use, handle, and dispose of PCBs in improper ways that caused PCBs to be released into the environment.
- i. Monsanto aggressively promoted, marketed, distributed, and sold its more heavily chlorinated PCBs, despite knowing they were more problematic pollutants.
- j. Even after learning about PCB risks, Monsanto chose not to, or otherwise failed to, thoroughly investigate them.
- k. Monsanto consciously decided not to, or recklessly or negligently failed to, recall or take back PCBs and PCB-containing products or take other steps to mitigate the trespass.

1. Monsanto's actions and failures to act caused PCBs to contaminate the District and the City, and the Estuary at levels that pose unacceptable risks to human health and the environment.

136. The District and the City did not authorize the entry of PCBs onto their property and the presence of the PCB contamination poses an unacceptable risk to human health and the environment.

137. The harms associated with this trespass are reasonably abatable.

138. As a direct and proximate result of Monsanto's acts and omissions, Plaintiffs have incurred and continue to incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs related to PCB contamination in the District, the City and the Estuary.

139. As a further direct and proximate result of Monsanto's acts and omissions, Plaintiffs have sustained and will sustain other substantial expenses and damages, including damages for loss of use and enjoyment, for which Defendants are liable because each has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

140. Monsanto acted with malice, oppression, or fraud as required for an award of punitive damages. As alleged elsewhere, Monsanto deliberately misled buyers of PCBs and PCB containing products, users of PCBs and PCB-containing products, governments, and the public. Monsanto also concealed the dangers of PCBs. Monsanto knowingly caused injury to the public welfare to safeguard its own profits.

FOURTH CAUSE OF ACTION

(Negligence)

141. Plaintiffs incorporate by reference each allegation contained above.

142. Monsanto owed a duty of care to all parties foreseeably injured by PCBs.

143. Monsanto also owed a duty of care because it had superior knowledge of and was in the best position to eliminate, reduce or mitigate PCB related hazards, including that:

- a. PCBs cause extensive and persistent contamination of soils, sediments, surface and groundwater, and fauna and biota, even when used in their foreseeable and intended manner.
- b. PCBs pose a significant risk to public health, economic welfare, and environment.
- c. PCB contamination in the environment is difficult and costly to treat, remove, and/or remediate.

144. Monsanto knew or should have known that the use of PCBs in their intended manner would result in the discharge, disposal, or release of PCBs into the environment and that, when released into the environment, PCBs would contaminate property and resources within the District and the City, including soils, sewers and sediments, which posed a substantial risk to health and the environment and would be difficult and costly to remove.

145. At all times relevant to the Complaint, the dangers posed by PCBs were not contemplated by ordinary consumers, the public, or the Plaintiffs.

146. Monsanto breached its duty of care by negligently designing, testing, manufacturing, marketing, promoting, selling, and distributing PCBs while concealing and misrepresenting the unreasonable dangers it knew or had reason to know were posed by PCBs.

147. Despite its sophisticated knowledge of the harms caused by PCBs, Monsanto further breached its duty of care by, among other things:

- a. Failing to adequately warn consumers, the public and the Plaintiffs of the risks and harms posed by PCBs;

- b. Failing to adequately instruct consumers and users on safe methods for handling, using and disposing of PCBs in a manner that would eliminate or minimize PCBs discharges to the environment;
- c. Failing to provide adequate precautions regarding the hazards of PCBs in its labeling of PCB containing products;
- d. Wrongfully promoting and marketing PCBs and PCB-containing products for an extremely wide range of commercial, household, and industrial uses and applications despite knowing about their dangers;
- e. Publicly downplaying the dangers of PCBs to the environment;
- f. Making false or misleading statements about the dangers of PCBs and PCB-containing products, the prevalence of PCBs in products, the likelihood of PCB releases, and the prevalence of PCBs in the environment;
- g. Concealing the dangers of PCBs and PCB-containing products, the likelihood of PCB releases, and the prevalence of PCBs in the environment to increase PCB sales, generating profits for the company at the expense of consumers, the public, the environment, and the Plaintiffs;
- h. Failing to investigate or develop safer alternative designs for PCB containing products, including designs that would reduce or minimize the adverse impacts PCBs have when released to the environment;
- i. Manufacturing, promoting, marketing, distributing, and selling PCBs and PCB-containing products without providing adequate warnings

and instructions about how they should be properly used, handled, and disposed;

- j. Directing PCB customers and users to use, handle, and dispose of PCBs in improper ways that caused PCBs to be released into the environment;
- k. Monsanto aggressively promoted, marketed, distributed, and sold its more heavily chlorinated PCBs, despite knowing they were more problematic pollutants;
- l. Failing to recall or take back PCBs and PCB-containing products or take other steps to mitigate the injuries;
- m. Failing to adopt feasible, reasonable and safer alternative designs that would eliminate or reduce the adverse environmental dangers; and
- n. Failing to adequately protect the consumers, the public, the environment, and Plaintiffs from the foreseeable dangers posed by PCBs.

148. As a direct and proximate result of Monsanto's acts and omissions, Plaintiffs have incurred and continue to incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs related to PCB contamination in the District, the City, and the Estuary.

149. As a further direct and proximate result of Monsanto's acts and omissions, Plaintiffs have sustained and will sustain other substantial expenses and damages, including damages for loss of use and enjoyment, for which Defendants are liable because each has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

150. Monsanto acted with malice, oppression, or fraud as required for an award of punitive damages. As alleged elsewhere, Monsanto deliberately misled buyers of PCBs and PCB containing products, users of PCBs and PCB-containing products, governments, and the public. Monsanto also concealed the dangers of PCBs. Monsanto knowingly caused injury to the public welfare to safeguard its own profits and the harms to property and resources in the District and the City far exceed the cost that Monsanto would have incurred to adequately protect against the dangers posed by its PCBs.

FIFTH CAUSE OF ACTION

(Strict Liability—Failure to Warn)

151. Plaintiffs incorporate by reference each allegation contained above.

152. At all times material to this Complaint, Monsanto was engaged in the business of manufacturing and selling PCBs.

153. As a manufacturer of PCBs, Monsanto had a strict duty to adequately warn against latent dangers resulting from foreseeable uses and misuses of PCBs that Monsanto knew or should have known about. Monsanto's duty to warn extended to all third parties—including Plaintiffs—who might foreseeably be harmed by the ordinary use and misuse of PCBs.

154. Monsanto knew or should have known that the use of PCBs in their intended manner would result in the discharge, disposal, or release of PCBs to the Plaintiffs' property and the environment.

155. Monsanto knew or should have known that PCBs released to the environment are extremely persistent and would contaminate resources and property in the District and the City, including soils, sediments, and sewers, and posed a substantial risk to human health and the environment that would be costly and difficult to remedy.

156. At all times relevant to the Complaint, the dangers posed by PCBs were not contemplated by ordinary consumers, the general public, or Plaintiffs. Monsanto had superior knowledge of those dangers and was in the best position to eliminate, reduce or mitigate PCB related hazards.

157. Notwithstanding its superior knowledge of the risks of its PCB products, Monsanto failed to warn consumers, the public, and Plaintiffs of those risks; it failed to instruct consumers and users on safe methods for handling, using, and disposing of PCBs in ways that eliminated or reduced PCB discharges to the environment; and it failed to provide adequate precautions regarding such hazards.

158. Any warnings Monsanto may have disseminated were rendered ineffective by its false and misleading public statements about the dangers of PCBs, and its longstanding effort to conceal and misrepresent the public health and environmental impacts of PCBs.

159. Monsanto's inadequate warnings and instructions rendered its PCBs defective and not reasonably safe.

160. Monsanto's defective warnings rendered PCBs unreasonably dangerous for their foreseeable uses and misuses because, among other things:

- a. PCBs cause extensive and persistent contamination of soils, sediments, surface and groundwater, and fauna and biota, even when used in their foreseeable and intended manner;
- b. PCBs pose a significant risk to public health, economic welfare, and environment;
- c. PCB contamination in the environment is difficult and costly to treat, remove, and/or remediate; and

- d. Monsanto affirmatively misrepresented and downplayed the health and environmental dangers posed by PCBs, and/or failed to provide adequate warnings about the health and environmental risks posed by PCBs.

161. Monsanto's PCBs were defective by virtue of their inadequate warnings at the time they left Monsanto's control, and those products reached their end user without substantial change in their condition.

162. Monsanto's failure to warn was a proximate cause of reasonably foreseeable injuries to Plaintiffs. Consumers and users would have heeded legally adequate warnings about the dangers of PCBs. PCBs would not have gained widespread acceptance in the marketplace, and third parties would have handled, distributed, used and disposed of PCBs in ways that reduced or eliminated PCB releases to the environment. In addition, if Monsanto had adequately warned of the adverse impacts of PCBs on health and the environment by the ordinary and foreseeable uses of PCBs, Plaintiffs would have taken measures to avoid or lessen those impacts.

163. As a direct and proximate result of Monsanto's inadequate warnings, Plaintiffs have incurred and continue to incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs related to PCB contamination in the District, the City and the Estuary.

164. As a further direct and proximate result of Monsanto's inadequate warnings, Plaintiffs have sustained and will sustain other substantial expenses and damages, including damages for loss of use and enjoyment, for which Defendants are liable because each has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

165. Monsanto knew with substantial certainty that its inadequate warnings would result in contamination of property and resources, including property and resources in the District and

the City. Monsanto acted with malice, oppression, or fraud as required for an award of punitive damages. As alleged elsewhere, Monsanto deliberately misled buyers of PCBs and PCB containing products, users of PCBs and PCB-containing products, governments, and the public. Monsanto also concealed the dangers of PCBs. Monsanto knowingly caused injury to the public welfare to safeguard its own profits.

SIXTH CAUSE OF ACTION

(Strict Products Liability—Design Defect)

166. Plaintiffs incorporate by reference each allegation contained above.

167. At all times material to this Complaint, Monsanto was engaged in the business of manufacturing and selling PCBs.

168. As a manufacturer of PCBs, Monsanto had a strict duty not to place into the stream of commerce a product that is unreasonably dangerous, and it owed a duty to all persons, including Plaintiffs, who might foreseeably be harmed by the ordinary use and misuse of PCBs.

169. Monsanto's PCBs are unreasonably dangerous for their foreseeable uses and misuses because, among other things:

- a. PCBs cause extensive and persistent contamination of soils, sediments, surface and groundwater, and fauna and biota, even when used in their foreseeable and intended manner;
- b. PCBs pose a significant risk to public health, economic welfare, and environment;
- c. PCB contamination in the environment is difficult and costly to treat, remove, and/or remediate; and
- d. Monsanto affirmatively misrepresented and downplayed the health and environmental dangers posed by PCBs.

170. At all times relevant to the Complaint, Monsanto's PCBs were dangerous to an extent beyond that which would be contemplated by the ordinary consumer, the public, and Plaintiffs.

171. Monsanto knew of these risks and nevertheless failed to use reasonable care in the design of PCBs and could have designed PCBs in ways that reduced or eliminated the health and environmental dangers posed by PCBs.

172. Monsanto's failure to adopt those reasonable, feasible, safer, alternative designs rendered their PCBs defective, not reasonably safe, and unreasonably dangerous to persons and property.

173. The foreseeable risk of harm to public health, property and the environment posed by Monsanto's PCBs outweighed the cost to Monsanto of reducing or eliminating such risk.

174. Monsanto's PCBs were defectively designed at the time they left Monsanto's control, and those products reached their end user without substantial change in their condition.

175. As a direct and proximate result of Monsanto's unreasonably dangerous design of PCBs, Plaintiffs have incurred and continue to incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs related to PCB contamination in the District, the City and the Milwaukee Estuary.

176. As a further direct and proximate result of Monsanto's unreasonably dangerous design of PCBs, Plaintiffs have sustained and will sustain other substantial expenses and damages, including damages for loss of use and enjoyment, for which Defendants are liable because each has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

177. Monsanto knew with substantial certainty that its unreasonably dangerous design of PCBs would contaminate property and resources, including property and resources in the

District and the City. Monsanto acted with malice, oppression, or fraud as required for an award of punitive damages.

178. As alleged elsewhere, Monsanto deliberately misled buyers of PCBs and PCB containing products, users of PCBs and PCB-containing products, governments, and the public. Monsanto also concealed the dangers of PCBs. Monsanto knowingly caused injury to the public welfare to safeguard its own profits.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully ask this Court for judgment against Defendants and to award Plaintiffs:

1. Compensatory damages arising from PCB contamination and injury to property and resources, in an amount to be proved at trial, including but not limited to:
 - a. Costs of investigation, testing and monitoring related to PCB contamination;
 - b. Costs of remediating PCB contamination in soils, sediments and sewers;
 - c. Loss-of-use and natural resource damages; and
 - d. Costs to remedy for loss of tax revenue and other economic benefits, including costs related to PCB contamination at tax-delinquent brownfield properties;
2. Injunctive and equitable relief to compel Defendants to abate the continuing nuisance and trespass described above, including in the form of an abatement fund to cover all future costs reasonably necessary for the District and the City to prevent PCBs from being discharged into the Estuary, and any costs the City may incur to comply with its municipal stormwater permit;
3. Punitive damages in an amount to be determined at trial;
4. An award of pre-judgment and post-judgment interest as provided by law; and

5. Any other and further relief that the Court deems just and appropriate.

JURY DEMAND

The Plaintiffs demand a twelve-person jury trial on all causes of action for which a jury is available under the law.

Dated at Milwaukee, Wisconsin, this 28th day of September, 2023.

Attorneys for Plaintiffs

By: *Electronically signed by Ted A. Warpinski*

HALLING & CAYO, S.C.
Ted A. Warpinski
State Bar I.D. No. 1018812
M. Andrew Skwierawski
State Bar I.D. No. 1063902

P.O. Address:
320 E. Buffalo Street, Suite 700
Milwaukee, WI 53202
Tel: (414) 217-3400
Fax: (414) 271-3841
mas@hallingcayo.com
taw@hallingcayo.com

MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT
Katherine E. Lazarski
State Bar I.D. No. 1038378
Joseph T. Ganzer
State Bar I.D. No. 1036120
260 W. Seeboth Street
Milwaukee, WI 53204,