

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

STATE OF MAINE,

Plaintiff,

v.

MONSANTO CO., SOLUTIA, INC., and
PHARMACIA LLC,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, the State of Maine (“Plaintiff” or the “State”) brings this action as trustee of State natural resources, as owner of State property, and in its *parens patriae* capacity, against defendants Monsanto Company, Solutia, Inc., and Pharmacia LLC (collectively, “Defendants”). Defendants have succeeded to the liabilities of an earlier Monsanto entity (“Old Monsanto”), and Old Monsanto and Defendants are referred to in this Complaint as “Monsanto.” Monsanto acted tortiously in the design, manufacture, marketing, and sale of certain toxic and environmentally persistent chemical compounds known as polychlorinated biphenyls (“PCBs”), which have caused environmental damage throughout Maine. The State respectfully alleges as follows:

I. INTRODUCTION

1. PCBs are toxic and dangerous synthetic organic chemical compounds. Due to their physical and chemical properties, which were known to Monsanto at all times relevant to this Complaint, PCBs are also extremely persistent in the environment, bioaccumulative in fish, wildlife, and humans, and semivolatile. Because PCBs and PCB-containing products were widely used in Maine and resist degradation, PCBs currently impair water bodies and other natural resources across the State.

2. Monsanto designed, manufactured, marketed, sold, and distributed PCBs and PCB-containing products from approximately 1935 to 1977. During that period, Monsanto was responsible for the manufacture of 99% or more of all PCBs used or sold within the United States.

3. Monsanto marketed commercial PCB products under trade names including Aroclor (the primary trade name for commercial PCB mixtures made by Monsanto), as well as Pyranol, Inerteen, Pydraul, and many others. Monsanto produced PCB formulations for use as plasticizers in plastics, rubbers, paints, caulks, and other applications, as well as for use in electrical and heating systems.

4. Because of PCBs' proven toxicity and persistence in the environment, production and, with limited exceptions, use of PCBs was prohibited in the United States in 1979, when the U.S. Environmental Protection Agency ("U.S. EPA") promulgated final regulations banning PCBs under the Toxic Substances Control Act ("TSCA"), enacted by the U.S. Congress in 1976.

5. At the time it designed, manufactured, used, marketed, distributed, and sold its commercial PCB mixtures, Monsanto knew that PCBs were highly toxic, harmful to human and animal health, and environmentally harmful.

6. Due to reports of worker injuries from acute exposure to toxic Aroclor vapors in the 1930s, Monsanto understood that, during ordinary use, PCBs would escape into air and come into both dermal and respiratory contact with workers handling or using the materials in industrial settings, causing skin eruptions and "systemic toxic effects," including liver disease.

7. Internally, the company acknowledged as early as 1937 that PCBs produce systemic toxic effects upon prolonged exposure and that vapor phase PCBs pose a serious risk of harm.

8. In the 1950s, Monsanto's Medical Office specifically advised workers not to eat

lunch in the PCB department at its facilities, with Monsanto's medical director openly declaring: "We know Aroclors are toxic."

9. Because of PCBs' toxicity and attendant risk to the workers handling PCBs, Monsanto instructed its customers to vent PCB vapors directly into the atmosphere, with no emission controls, inevitably putting the environment at risk.

10. Monsanto knew that PCBs substantially persist in the natural environment rather than break down over time. Monsanto actively marketed its PCB products' high degree of chemical stability and inertness as a selling point for certain industrial applications, knowing that this stability and inertness also meant that the chemicals would persist and resist degradation in the environment.

11. Monsanto knew or should have known that PCBs bioaccumulate and biomagnify in organic tissue, including in fish tissue and human tissue. Although PCBs are relatively insoluble in water, they are soluble in fats and oils. PCBs build up in living tissue over time and increasingly concentrate in animals higher up in the food chain, which consume animals and biota lower in the food chain. As a result, as time passes, PCB contamination poses an ongoing hazardous threat to the health of the State's residents and its natural resources.

12. Despite its early knowledge of the grave dangers associated with PCBs, Monsanto embarked on a decades-long campaign of misinformation and deception to prolong and even increase the rate of manufacture and the sale and use of its commercial PCB mixtures in Maine and elsewhere.

13. Monsanto vigorously denied in public statements that PCBs are harmful to human health and the environment, despite accumulating a wealth of knowledge contradicting such statements.

14. As Monsanto knew, or should have known, Monsanto's PCB formulations would

inevitably volatilize and leach, leak, and escape their intended applications, contaminating runoff during naturally occurring storm and rain events and entering waters, sediment, soils, and fish and other natural resources throughout Maine.

15. Nonetheless, Monsanto sold its PCB products for an ever-increasing range of uses, including household uses. PCBs were sold for use in paints, caulks, inks, dyes, lubricants, sealants, plastics, coolants, hydraulic fluids, fireproofing, and electrical equipment such as capacitors and transformers, among other applications.

16. From 1960 to the mid-1970s alone, Monsanto sold at least hundreds of thousands of pounds of commercial PCB mixtures to customers in Maine.

17. Monsanto advised its customers to dispose of PCB-containing wastes using methods known to cause environmental contamination, including venting PCB vapors directly into the atmosphere, discharging aqueous PCB wastes into sewers, dumping PCB-filled heat transfer systems and transformers onto the ground or into streams, and using unlined landfills and pits to receive PCB wastes.

18. Monsanto similarly manufactured and sold various products incorporating their PCB formulations, including mixtures composed of PCBs and hydrocarbons such as toluene in which PCBs are soluble. Such product formulations enhanced the environmental risk posed by PCBs as they allowed PCBs to more easily escape their applications to cause environmental contamination.

19. Monsanto's internal documents show that the company deliberately decided to keep producing and selling PCB mixtures despite the mass contamination they inevitably caused. For example, in 1969, Monsanto admitted internally that there was "little probability that any action that can be taken will prevent the growing incrimination of specific polychlorinated biphenyls . . . 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.” Monsanto acknowledged that there was “no practical course of action” to prevent this mass contamination, but still insisted on taking steps “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.” Another internal Monsanto document from the same time period was more succinct about the reasons: “there is too much customer/market need and selfishly too much Monsanto profit to go out.”

20. As a result of Monsanto’s misconduct, Monsanto’s PCBs now widely contaminate Maine’s natural resources. More than 400 Maine river and stream miles and over 1.8 million ocean acres under Maine’s trusteeship are currently identified as “impaired”—that is, they do not satisfy the criteria for one or more beneficial uses—because the PCBs in those waterbodies exceed Maine’s water quality standards.

21. Maine has been forced to issue stringent PCB-specific fish and shellfish consumption advisories, advising the public either not to eat certain fish at all or to limit consumption to, for example, just one meal per month or six meals per year for fish taken from various segments of many Maine waterbodies, to the detriment of Maine’s subsistence and sport fishers, residents, and the State itself. Maine has also been forced to advise the public not to consume lobster tomalley due to elevated PCB levels in this portion of the lobster body.

22. The State has the authority and responsibility to protect, conserve, and manage State natural resources for present and future generations of Mainers. The State seeks damages and other relief for PCB contamination and injury in its capacity as trustee of State natural resources and in its *parens patriae* capacity on behalf of State citizens. The State also acts to protect its own interests in property.

23. By this action, the State seeks recovery of all costs and damages for injuries to

natural resources of the State, including surface waters, sediments, wetlands, soils, and biota, resulting from Monsanto's design, manufacture, use, marketing, sale, and distribution of commercial PCB mixtures and PCB-containing products, the ordinary and intended use and disposal of which resulted in environmental harm. Such costs and damages include, but are not limited to: the costs of restoring natural resources of the State to their pre-discharge condition; the costs of replacing natural resources and/or their associated ecosystem services; damages for the loss of use and value (including existence value) of natural resources; the costs of assessing natural resource injuries and damages; the unreimbursed costs of investigation, oversight, and remediation of environmental harm; punitive damages; litigation fees and costs; and pre-judgment interest.

II. PLAINTIFF

24. Plaintiff State of Maine is a sovereign state and brings this action by and through its Attorney General, with his principal office at 6 State House Station, Augusta, Maine 04333, pursuant to the powers vested in him by the common law and by 5 M.R.S. § 191 as the chief legal officer of the State of Maine.

25. The State brings this action in its capacity as sovereign, as trustee of State natural resources and owner of property (or of substantial interests in property) contaminated and injured by Defendants, and pursuant to its *parens patriae* authority on behalf of the citizens of Maine. As described below, PCB contamination in Maine threatens the physical and economic well-being and health of Maine residents and the integrity of the State's natural resources. The State has a sovereign and quasi-sovereign interest in addressing this threat.

26. The State also brings this action based upon its statutory authority, including 38 M.R.S. § 341-A, to protect State natural resources and State property and its common-law police power. This power includes its power to prevent pollution of the State's natural resources and

State property, to prevent nuisances, and to prevent and abate hazards to public health, safety, welfare, and the environment.

27. In this Complaint, the term “State’s natural resources and property” refers to all natural resources or property for which the State seeks damages, including without limitation fish, wildlife, biota, surface water, wetlands, soil, sediment, public lands the State holds in trust, and State-owned lands.

III. DEFENDANTS

28. Defendant Monsanto Company is a Delaware corporation with its principal place of business at 800 N. Lindbergh Boulevard, St. Louis, Missouri 63167. Following a merger transaction that closed in 2018, Monsanto Company is a wholly-owned subsidiary of Bayer AG.

29. Defendant Solutia, Inc. (“Solutia”), is a Delaware corporation with its principal place of business at 575 Maryville Centre Drive, St. Louis, Missouri 63141. Solutia is a wholly-owned subsidiary of Eastman Chemical Company.

30. Defendant Pharmacia LLC (“Pharmacia”), formerly known as Pharmacia Corporation, is the direct successor to the original Monsanto Company (“Old Monsanto”). Pharmacia is a Delaware company with its principal place of business at 100 Route 206 N., Peapack, New Jersey 07977. Pharmacia is a wholly-owned subsidiary of Pfizer, Inc.

31. Old Monsanto operated an agricultural products business, a pharmaceutical and nutrition business, and a chemical products business. Old Monsanto began manufacturing PCBs in 1935 after acquiring Swann Chemical Company, which manufactured PCBs from 1929 to 1935. Old Monsanto continued to manufacture commercial PCBs until the late 1970s.

32. Through a series of transactions beginning in approximately 1997, Old Monsanto’s businesses were spun off to form three separate corporations.

33. The corporation now known as Monsanto Company (and referred to herein as “New Monsanto”) operates Old Monsanto’s agricultural products business.

34. Old Monsanto’s chemical products business is now operated by Solutia.

35. Old Monsanto’s pharmaceutical business is now operated by Pharmacia.

36. Solutia was organized by Old Monsanto to own and operate its chemical manufacturing business. Solutia assumed the operations, assets, and liabilities of Old Monsanto’s chemical manufacturing business.

37. Although Solutia assumed and agreed to indemnify Pharmacia for certain liabilities related to the chemicals business, Defendants have also entered into agreements to share or apportion liabilities, and/or to indemnify one or more entities, for claims arising from Old Monsanto’s chemical business, including the manufacture and sale of PCBs.

38. In 2003, Solutia filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Solutia’s reorganization was completed in 2008. In connection with Solutia’s Plan of Reorganization, Solutia, Pharmacia, and New Monsanto entered into several agreements under which New Monsanto continues to manage and assume financial responsibility for certain tort litigation and environmental remediation related to the chemicals business.

39. Eastman Chemical Co. reported in its 2021 Form 10-K that it

has been named as a defendant in several [legacy tort] proceedings, and has submitted the matters to [New] Monsanto, which was acquired by Bayer AG in June 2018, as Legacy Tort Claims [as defined in a settlement agreement with Monsanto arising out of Solutia’s bankruptcy proceedings]. To the extent these matters are not within the meaning of Legacy Tort Claims, Solutia could potentially be liable thereunder. In connection with the completion of its acquisition of Solutia, Eastman guaranteed the obligations of Solutia and Eastman was added as an indemnified party under the Monsanto Settlement Agreement.

40. In its Form 10-K for the period ending August 31, 2017, filed with the U.S. Securities and Exchange Commission (the last such filing before Bayer AG acquired New Monsanto), New Monsanto represented: “[New] Monsanto is involved in environmental

remediation and legal proceedings to which Monsanto is a party in its own name and proceedings to which its former parent, Pharmacia LLC or its former subsidiary, Solutia, Inc., is a party but that Monsanto manages and for which Monsanto is responsible pursuant to certain indemnification agreements. In addition, Monsanto has liabilities established for various product claims. With respect to certain of these proceedings, Monsanto has established a reserve for the estimated liabilities.” The filing specifies that the company held \$277 million in that reserve as of August 31, 2017.

IV. JURISDICTION AND VENUE

41. This Court has jurisdiction over the subject matter of this action pursuant to 4 M.R.S. § 105. This Court may exercise jurisdiction over Defendants under 14 M.R.S. § 704-A because they either are or at the relevant time were: authorized to do business in Maine; registered with the Maine Secretary of State; transacting sufficient business with sufficient minimum contacts in Maine or otherwise intentionally availing themselves of the Maine market through the design, manufacturing, use, marketing, distribution, and/or sale of PCBs and PCB-containing products in Maine; and/or causing a tortious act to be done, or causing the consequences of a tortious act to occur, within this State, as set forth in detail herein.

42. Venue is proper in this Court under 14 M.R.S. §§ 501, 505, and 507 because the State is the Plaintiff, and State natural resources and/or property have been contaminated, injured, and damaged by PCB contamination in Cumberland County, because Defendants conduct business in Cumberland County, and because this is an action to recover monies due the State or property belonging to the State or the value thereof.

V. PCBs ARE DANGEROUS CHEMICALS THAT THREATEN HUMAN AND ENVIRONMENTAL HEALTH AND SAFETY

A. Physical and chemical properties of PCBs

43. PCBs are a class of synthetic organic chemical compounds in which a maximum of ten chlorine atoms are attached to the biphenyl molecule.

44. There are no known natural sources of PCBs in the environment.

45. There are 209 distinct PCB compounds (known as congeners) with from 1 to 10 chlorine atoms on a biphenyl molecule. The number and placement of the chlorine atoms on the biphenyl molecule determine how the congener is named and dictates its environmental fate and toxicity.

46. Old Monsanto manufactured PCB mixtures primarily under the “Aroclor” trade name. Aroclors are differentiated principally by the composition of chlorine by weight, so, for example, “Aroclor 1254” means the mixture contains approximately 54% chlorine by weight. Generally, the higher the chlorine content of a PCB mixture, the greater its chemical stability and environmental persistence.

47. Old Monsanto’s commercial PCB formulations sought to maximize the products’ stability, and thus also their persistence and resistance to degradation.

48. PCBs do not burn easily, are relatively insoluble in water, adsorb to solids and particulate matter, and bioaccumulate and biomagnify in living tissue.

49. PCBs are semivolatile. Small amounts of PCBs vaporize from PCB-containing products and PCB-contaminated sites, resulting in air contamination and long-range transport of PCB vapors, at normal environmental temperatures. PCB volatilization increases with increases in temperature, *i.e.*, more PCBs are released to the atmosphere from PCB-containing products or PCB-contaminated sites as temperature increases.

50. PCBs entered the atmosphere, waters, sediments, and soils during their ordinary and prescribed uses. Indeed, PCBs gradually escaped and dispersed from their common applications, *e.g.*, in road paint or caulking, into the natural environment due to the chemical compounds' tendency to volatilize, that is to emit PCB vapors, particularly when exposed to heat (such as when road paint or building materials are exposed to the sun over time). As vapors, PCBs travel through the air, eventually settling in nearby soil, sediment, or waterbodies, and continue to circulate in the atmosphere indefinitely.

51. Similarly, PCBs can be released by the grinding, scraping, and removal of caulking and other construction materials that include PCBs, resulting in the contamination of nearby soil.

52. PCBs also entered the environment from spills and leaks in the ordinary course of business such as through transport of the chemicals, and from leaks or fires in transformers, capacitors, or other products containing PCBs, and from the burning of wastes in some municipal or industrial incinerators.

53. In addition, Old Monsanto prescribed that PCBs and PCB-contaminated wastes should be disposed of in the ordinary course in normal unlined landfills and pits, from which they easily escaped, leached, and leaked into the surrounding environment. Old Monsanto instructed customers to drain PCB-filled heat transfer systems and other equipment, and to dispose of the PCB wastes without taking any particular precautions.

54. Old Monsanto also advised customers to discharge liquid PCB wastes into sewers despite knowing that this would directly introduce PCBs into surface waters, and to vent PCB vapors to the atmosphere despite knowing that this would directly introduce PCBs into the atmosphere, soils, and surface waters.

55. Once in the environment, PCBs do not break down readily and may remain for decades absent remediation.

56. In water, PCBs travel along currents and attach to bottom sediments or particles in the water and evaporate into the atmosphere or settle into sediment. Sediments contaminated with PCBs also release PCBs into surrounding water.

57. In soil, PCBs combine with soil organic matter and remain in soil for many years. PCBs have great negative effects on plants and microorganisms; they harm the whole soil biosphere. Soil contamination may also lead to human exposure through incidental ingestion, inhalation, or dermal contact.

58. As a gas, PCBs can accumulate in the leaves and above-ground parts of plants and food crops, and pose direct human health threats as a result of human exposure to PCB-contaminated air. PCBs are taken up into the bodies of small organisms and fish in water. They are also taken up by other animals that eat these aquatic animals as food, and eventually by humans. PCBs especially accumulate in fish and marine animals, reaching levels that may be many thousands of times higher than in water because PCBs are soluble in lipids including body fat and bioaccumulate and biomagnify over time in living tissue. PCB levels are generally highest in animals higher up the food chain.

B. Health and ecological effects of exposure to PCBs

59. Humans are exposed to PCBs due to their existence in the environment, primarily from eating contaminated food, breathing contaminated air, or drinking or swimming in contaminated water.

60. The major dietary sources of PCBs are fish (especially sportfish caught in contaminated waterbodies), meat, and dairy products. PCBs also collect in milk fat and can enter the bodies of infants through breast-feeding.

61. Fetuses in the womb are also exposed to PCBs through their mothers. Studies show that babies born to mothers exposed to high concentrations of PCBs in the workplace or from eating PCB-contaminated fish suffer from lower birth weight than other babies. Babies born to women exposed to PCBs before and during pregnancy showed abnormal responses to infant behavioral tests, including motor skills, and experienced short-term memory deficiencies.

62. Many studies have examined how PCBs affect human health. Human health effects associated with PCB exposure include liver, thyroid, dermal, and ocular changes, immunological alterations, neurodevelopmental and neurobehavioral changes, reduced birth weight, reproductive toxicity, and cancer.

63. Neurological changes associated with PCB exposure include abnormal reflexes and deficits in memory, learning, impulse control, and IQ. Such changes impact infants and children more severely than adults. PCBs are known neurotoxins.

64. Reproductive changes associated with PCB exposure include menstrual disturbances in women and effects on sperm morphology and production in men, all of which can result in difficulty conceiving.

65. PCBs are associated with a number of cancers, including cancer of the liver, biliary tract, intestines, and skin (melanoma).

66. Studies of workers routinely exposed to PCBs show that PCB exposure is associated with irritation of the nose and lungs, gastrointestinal discomfort, changes in the blood and liver, and depression and fatigue, as well as cancer of the liver and biliary tract. In 1996, U.S. EPA assessed PCB carcinogenicity based on data related to Aroclors 1016, 1242, 1254, and 1260. U.S. EPA's cancer assessment was peer-reviewed by 15 experts on PCBs, including scientists from government, academia, and industry. All 15 experts agreed that PCBs are probable human carcinogens.

67. Since at least 2002, the U.S. Department of Health and Human Services' National Toxicology Program has considered PCBs to be "reasonably anticipated" carcinogens.

68. The International Agency for Research on Cancer ("IARC"), an intergovernmental agency forming part of the World Health Organization of the United Nations, concluded in March 2013, based on the assessments of 26 experts from 12 countries, that PCBs are known human carcinogens.

69. In its formal 2016 report, the IARC stated, "There is sufficient evidence in humans for the carcinogenicity of [PCBs]. PCBs cause malignant melanoma. Positive associations have been observed for non-Hodgkin lymphoma and cancer of the breast. ... PCBs are carcinogenic to humans"

70. In addition to being highly toxic to humans, Monsanto's commercial PCB mixtures are highly toxic to fish and wildlife.

71. Studies of bird populations have drawn strong correlations between elevated PCB concentrations in blood and declining bird populations, as well as increased frequency of developmental abnormalities and deformities.

72. PCBs have also been shown to cause eggshell thinning in many bird species resulting in reproductive failure and generally decreased reproductive capacity.

73. Mammalian studies have shown that PCB exposure adversely affects patterns of survival, reproduction, growth, metabolism, and accumulation.

74. Studies on bats, dogs, cats, foxes, minks, otters, bears, rats, monkeys, and other mammals, including marine mammals, have generated strong associations between exposure to commercial PCB mixtures and a host of health effects, including hepatomegaly (enlarged liver), impaired behavior and development, increased abortion, low birth weight, teratogenicity (embryotic malformation), and preneoplastic changes (tumor development).

75. Aquatic organisms are also sensitive to PCB contamination and suffer adverse effects in proportion to PCB exposure. For instance, studies of reproductive effects on salmon, bass, zebrafish, and other fish species have demonstrated decreased reproductive success in populations with high PCB exposure, and PCB concentrations are directly correlated to hatching success rates.

76. PCBs also impact the reproduction of reptiles such as snapping turtles. Studies have found strong associations between low snapping turtle egg hatch rates and increased frequency of deformed hatchlings on one hand and elevated PCB concentrations in such eggs on the other.

C. Monsanto knew PCBs were dangerous contaminants at the time of their manufacture, marketing, sale, and distribution

77. Old Monsanto developed an early, sophisticated understanding of the dangers associated with PCB compounds.

78. In 1936, many workers using PCBs at a New York facility operated by Halowax Corporation were afflicted with severe chloracne. Three workers died and autopsies revealed severe liver damage in two of them.

79. Halowax Corporation asked Harvard University researcher Dr. Cecil K. Drinker to investigate the issue, and Dr. Drinker's analysis was presented at a 1937 meeting attended by high-level personnel employed by Old Monsanto.

80. Dr. Drinker's investigation revealed that rats exposed to PCBs suffered severe liver damage. Dr. Drinker's results were published in a September 1937 issue of the *Journal of Industrial Hygiene and Toxicology*.

81. That same year, Old Monsanto admitted in an internal report that PCBs produce "systemic toxic effects" in humans as a result of prolonged exposure to PCB vapors or oral ingestion, and that bodily contact with PCBs produced "an acne-form skin eruption."

82. Old Monsanto subsequently retained Dr. Drinker to conduct further animal studies. In September 1938, Dr. Drinker confirmed liver damage in rats exposed to various formulations of PCB compounds.

83. Other studies also explored and confirmed the toxicity of chlorinated hydrocarbons like PCBs. A 1939 study published in the *Journal of Industrial Hygiene and Toxicology*, for example, referenced the worker fatalities investigated by Dr. Drinker and went on to conclude that pregnant women and persons previously affected by liver disease are particularly susceptible to adverse effects from chlorinated hydrocarbons, such as PCBs.

84. In 1944, another set of studies, this time on the acute toxicity in guinea pigs, rabbits, and rats exposed to PCBs, was published in *Public Health Reports* and further confirmed PCB toxicity. The study, conducted by the Industrial Hygiene Research Laboratory of the National Institutes through then-U.S. Health Service surgeon Dr. J.W. Miller, reported liver damage in animals who were fed PCBs during periods of 30 to 90 days and likewise observed liver damage where animals received subcutaneous injections or applications of PCBs to the skin.

85. In February 1950, Old Monsanto Medical Director Dr. R. Emmet Kelly acknowledged that when workers fell ill at an Indiana factory that used PCBs in the manufacturing process, he immediately “suspected the possibility that the Aroclor fumes may have caused liver damage.”

86. A 1955 report on the production of Aroclor prepared by Old Monsanto likewise acknowledged that in the “early days of development,” workers at a plant in Anniston, Alabama processing PCBs had developed chloracne and liver problems.

87. In 1955, Dr. Kelly further documented the company’s clear understanding: “We know Aroclors are toxic[.]” Dr. Kelly also recognized the scope of Old Monsanto’s potential

legal liability, explaining that “our main worry is what will happen if an individual develop[s] 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 concentration levels].”

88. Old Monsanto’s Medical Department at its W.G. Krummrich Plant in Illinois prohibited workers from eating lunch in the Aroclor department in November 1955. The Medical Department memorandum explained that “Aroclor vapors and other process vapors could contaminate the lunches unless they were properly protected” and that “[w]hen working with this material, the chance of contaminating hands and subsequently contaminating the food is a definite possibility.”

89. Because of PCBs’ toxicity and attendant risk to the workers handling PCBs, Old Monsanto specifically instructed its customers to vent PCB vapors directly into the atmosphere, inevitably putting the environment at risk.

90. In January 1957, Dr. Kelly reported that the U.S. Navy had refused to use Old Monsanto’s PCB products in submarines: “No matter how we discussed the situation, it was impossible to change their thinking that Pydraul 150 [a PCB product marketed by Old Monsanto] is just too toxic for use in a submarine.”

91. Notably, at the same time it was manufacturing PCBs, Old Monsanto also manufactured—and researched the toxicological profile and environmental effect of—DDT, another now-infamous chlorinated hydrocarbon similar to PCBs.

92. By the late 1940s, Old Monsanto had already researched and compiled an extensive toxicological profile of DDT showing that it is extremely toxic to human and environmental health. Indeed, by then, scientific researchers had established that DDT and other chlorinated hydrocarbons are absorbed and stored in fatty tissue of living organisms exposed to them and pass these contaminants on to their offspring.

93. For instance, the *American Journal of Public Health* published a 1950 report warning that “chlorinated hydrocarbons, such as DDT and chlordane, are soluble in fats and are stored in the fatty tissues of the body. These compounds possess a high order of toxicity, and their uncontrolled or unwise use is not desirable.” As Old Monsanto knew by no later than 1950, or at a minimum should have known, the same was and is true of its PCB compounds.

94. Extensive scientific research establishing the toxicity and bioaccumulative and biopersistent nature of DDT and other chlorinated hydrocarbons was published from the 1940s to the 1960s. Old Monsanto produced DDT and was acutely aware of this research. Old Monsanto was also acutely aware of the similarities between DDT and PCBs.

95. Despite its early knowledge of the human health and environmental hazards PCBs posed, Old Monsanto for decades went to great lengths to protect its profitable PCB franchise, and aggressively manufactured, marketed, sold, and distributed its commercial PCB formulations, deceiving regulators and the public in the process.

D. Even after PCBs were identified as a global contaminant, Monsanto embarked on a campaign of deception to protect its PCB franchise

96. In 1966, the *New Scientist* published a short article (“Report of a New Chemical Hazard”), summarizing recent research by Dr. Søren Jensen, a Swedish chemist at Stockholm University’s Institution of Analytical Chemistry, which estimated that PCBs may be spreading through environments in high volumes due to their use by manufacturing interests.

97. Dr. Jensen had accidentally found enormous quantities of PCB compounds in wildlife while analyzing DDT accumulations. Dr. Jensen presented his findings to the scientific community in 1966, including that PCBs “appear[] to be the most injurious chlorinated compounds of all tested.” Dr. Jensen reported that the “main characteristic[s]” of PCBs include their “very high stability,” lack of “metaboliz[ation] in living organism[s],” and their non-flammability.

98. Old Monsanto's Medical Director, Dr. Kelly, was aware of Dr. Jensen's findings at the time.

99. In December of 1968, *Nature* published an article by Dr. Richard Risebrough of the University of California entitled, "Polychlorinated Biphenyls in the Global Ecosystem." The article assessed PCB presence in marine wildlife and reports high concentrations of PCBs detected in peregrine falcons and 34 other bird species, drawing an immediate connection between PCBs and the catastrophic decline of peregrine falcon populations in the United States.

100. Old Monsanto personnel took note of Dr. Risebrough's article, recognizing the public-relations disaster it portended. W.R. Richard, manager of Old Monsanto's Research and Development of Organics Division, wrote in early 1969 that the article shows not only that PCBs are "toxic substance[s]" but also because they are easily and broadly distributed in air and water, they are "an uncontrollable pollutant ... causing [the] extinction of [the] peregrine falcon ... [and] endangering man himself."

101. Also in 1969, Dr. Jensen published the formal results of his years-long research into PCBs in the environment. Dr. Jensen's research demonstrated very high PCB concentrations in Baltic Sea fauna such as white-tailed sea eagles. As a recent commentator observed, summarizing the implications of Dr. Jensen's results, "PCBs had entered the environment in large quantities for more than 37 years and were bio-accumulating along the food chain."

102. In September 1969, Monsanto's W.R. Richard wrote a memorandum titled, "Defense of Aroclor." Richard's memo notes that critics of PCBs have raised a multitude of different issues with the compounds, so "[w]e can't defend vs. everything. Some animals or fish or insects will be harmed. Aroclor degradation rate will be slow. Tough to defend against.

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

103. In the same document, Richard admitted that PCBs will leak from virtually all applications, including such “closed” applications as air compressor, heat transfer, and capacitor fluids.

104. That same month, Old Monsanto formed what it dubbed the “Aroclor Ad Hoc Committee” to strategize about defending its PCB business against growing public outcry and growing evidence of PCBs’ toxicity and environmental harms. The minutes of the Ad Hoc Committee’s first meeting observed that PCBs had been found in fish, oysters, shrimp, and birds, along the coasts of industrialized areas including Great Britain, Sweden, the Rhine River, Lake Michigan, Pensacola Bay, and in wildlife throughout the Western hemisphere.

105. The Ad Hoc Committee acknowledged in 1969 that normal and intended uses of PCB-containing products were the cause of the contamination: “In one application alone (highway paints), one million lbs/year are used. Through abrasion and leaching we can assume that nearly all of this Aroclor winds up in the environment.”

106. The Ad Hoc Committee worked in the same time period to formulate a response to growing concerns over PCBs, including those reflected by the U.S. Department of the Interior’s Fish and Wildlife Service (which found PCBs in dead eagles and marine birds), the Bureau of Commercial Fisheries (which found PCBs in the river below Monsanto’s Pensacola plant), and the U.S. Food and Drug Administration (which found PCBs in milk supplies).

107. The Ad Hoc Committee’s constitutive 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.”

108. As the minutes reflect, “there is little probability that any action that can be taken will prevent the growing incrimination of specific polychlorinated biphenyls ... 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.” However, while “there is no practical course of action that can so effectively police the uses of these products as to prevent environmental contamination ... [t]here are ... a number of actions which must be undertaken to prolong the manufacture, sale and use of these particular Aroclors as well as to protect the continued use of other members of the Aroclor series.”

109. In keeping with the corporate strategy reflected in the Aroclor Ad Hoc Committee meeting minutes and elsewhere, Old Monsanto not only continued producing Aroclors through 1969, but increased production that year and again in 1970, which were the highest volume production years in the history of PCBs.

110. Old Monsanto likewise vigorously protected the Aroclor brand from regulatory intrusion. Old Monsanto falsely told regulators that it “d[id] not believe the polychlorinated biphenyls to be seriously toxic,” that Old Monsanto could not “conceive of how the PCBs can become widespread in the environment,” and that, in light of PCBs’ chemical inertness, Old Monsanto “would anticipate no problems associated with the environment from refuse dumps.”

111. Dr. Elmer Wheeler, in Old Monsanto’s Medical Department, circulated laboratory reports discussing results of animal studies in January 1970, in which Dr. Wheeler noted that “PCBs are about the same as DDT in mammals[,]” the other toxic chlorinated hydrocarbon the

dangerous characteristics and environmental threats of which Old Monsanto had known about for decades.

112. At the same time that it was internally acknowledging that PCBs are “about the same” as DDT, in January 1970, the journal *Environment* published a company note authored by Old Monsanto: “Monsanto Statement on PCB” (the “Note”). The Old Monsanto Note acknowledged that recent studies, including Dr. Jensen’s studies, indicated PCBs’ widespread presence in the natural environment, and expressed the company’s “concern[] over the situation.”

113. However, that Note defended PCBs by deploying a variety of false statements that Old Monsanto used on multiple occasions in the late 1960s and early 1970s to minimize the negative impacts on PCBs.

114. In particular, Old Monsanto claimed in the Note that (a) PCBs cannot escape so-called “closed applications” where PCBs are “completely sealed in metal containers”; (b) PCBs cannot escape applications such as adhesives, elastomers, and surface coatings; (c) PCBs are not “to our knowledge” used in “household products”; and (d) it is simply “not true” that PCBs are “highly toxic.”

115. Old Monsanto knew all of these statements were untrue and would tend to mislead regulators and the public when they published them.

116. As described above, Old Monsanto knew its PCB compounds were highly toxic as early as 1937. Old Monsanto also knew well before 1970 that a number of studies, both internal and external, had demonstrated human and animal toxicity and prevalent contamination of waters and soils.

117. Contrary to their published claims, Old Monsanto also knew PCBs would leach, leak, off-gas, and escape their ordinary and intended applications, including open and closed applications, and cause significant injury to natural resources and human life.

118. Old Monsanto also knew that the PCBs they produced were used in “household products” and that Old Monsanto aggressively promoted the use of PCBs in “household products.” For example, in a 1960 brochure, Old Monsanto promoted the use of Aroclors in a wide variety of household and personal products including home appliances, food cookers, potato chip fryers, thermostats, automotive transmission oil, insecticides, waxes used in dental casting, jewelry, lubricants, adhesives, moisture-proof coatings, printing inks, papers, sealants and caulking compounds, tack coatings, asphalt, paints, varnishes, lacquers, masonry coatings for swimming pools, stucco homes, and protective or decorative coatings for a number of other finishes.

119. A 1961 brochure published by Old Monsanto explained that Aroclors are used in “lacquers for women’s shoes,” as a “wax for the flame proofing of Christmas trees,” as “floor wax,” as an adhesive for bookbinding, leather, and shoes, and as invisible marking ink used to make chenille rugs and spreads.

120. Old Monsanto also knew by no later than the 1940s that PCBs were used in products certain to directly result in contamination of the environment, such as highway paints and other exterior applications.

121. In February 1970, Old Monsanto’s high-level personnel circulated a talking-points memorandum to be used in engaging with customers who raised concerns over PCB toxicity. Although Old Monsanto had reformulated certain high-chlorine mixtures (Aroclor 1254 and 1260) to lower the chlorine content, it instructed employees to resist product returns of the more toxic high-chlorination formulations, explaining that Old Monsanto “can’t afford to lose one dollar of business.” The memo instructed employees to advise customers to use up their existing Aroclor 1254 and 1260 before topping up with new fluids: “We don’t want to take fluid back.”

122. Old Monsanto itself failed to take adequate precautions in disposing of PCBs and PCB-contaminated waste that it generated. Its staff routinely disposed of PCB wastes in an unsafe manner. For example, the company's sanitation staff handling on-site spills would routinely sweep PCB materials into the drainage system rather than collect it for proper disposal. Moreover, Old Monsanto operated or used open outdoor unlined dump sites at which it disposed of PCB wastes at its own facilities.

123. Old Monsanto executive William Papageorge wrote in a letter dated March 6, 1970 that, "All waste containing PCB's [sic] is at present hauled to the dumps the plants have been using for other plant waste. We recognize this is not the ultimate, since PCB's [sic] could eventually enter the environment, but we will continue this practice until better methods of disposal are available." Mr. Papageorge further acknowledged in testimony provided in 1975 to the Wisconsin Department of Natural Resources that Old Monsanto generally recommended disposal of PCB-contaminated wastes in landfills.

124. Old Monsanto's Dr. Kelly communicated with the Ohio State Board of Health in March 1970 regarding the detection of PCBs, particularly Aroclor 1254, in samples of milk from at least three herds of cows in Ohio. The Board traced this contamination back to Aroclor-containing paint flaking off and possibly leaching from the interior walls of the silos in which the milk was stored. The Board reported to Old Monsanto that it would have to destroy about 150 tons of milk, valued at about \$30 per ton. The Board also reported that there might be 50 other silos similarly contaminated in the state that were painted with the same formulation.

125. In response, Dr. Kelly communicated to other Old Monsanto officials:

All in all, this could be quite a serious problem, having legal and publicity overtones. This brings us to a very serious point. When are we going to tell our customers not to use any Aroclor in any paint formulation that contacts foods, feed, or water for animals or humans? I think it is very important that this be done.

126. Old Monsanto never heeded Dr. Kelly's admonition to warn the public or its customers of the dangers of similar applications of Aroclors.

127. An internal memorandum prepared by Dr. Kelly dated February 10, 1967, similarly expressed his concern about PCB contamination: "We are very worried about what is liable to happen in the [United States] when the various technical and lay news media pick up the subject [of PCB contamination]. This is especially critical at this time because air pollution is getting a tremendous amount of publicity in the United States." Dr. Kelly's memorandum noted that some of Old Monsanto's largest customers, such as NCR (National Cash Register), had been pressing Old Monsanto to furnish more information on PCB safety, but that Old Monsanto had dodged their inquiries.

128. Old Monsanto's misrepresentations and omissions to public entities and others were designed to conceal the toxicity and hazardousness of its PCB formulations to humans and the natural environment in order to salvage what Old Monsanto repeatedly emphasized was "one of Monsanto's most profitable franchises," generating tens of millions of dollars in annual revenues.

129. An internal presentation to Old Monsanto's Corporate Development Committee generated in or around 1969 advised Old Monsanto against exiting the Aroclor market despite clear knowledge of its dangers because "there is too much customer/market need and selfishly too much Monsanto profit to go out."

130. Another internal Old Monsanto memorandum remarked, "There can not [sic] 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."

131. In short, though Old Monsanto had a complete and comprehensive record of all PCB-related scientific research and general reportage during the time period during which Old

Monsanto manufactured and sold PCBs and PCB-containing products (an August 6, 1971 internal memorandum noted that the company “ha[s] probably the world’s best reference file on the PCB situation”), and though Old Monsanto itself had adduced a thorough understanding of the chemical and physical properties of PCBs going back to the 1930s and had studied the behavior of PCBs in environmental media, the company failed to timely alert regulators and the public of the dangers of its PCBs, and did not take adequate steps to stave off the impending environmental disaster, all to shield its sales, profits, and reputation.

132. Rather than admit the hazards associated with widespread PCB usage, Old Monsanto elected to finally withdraw from certain markets around 1972. Old Monsanto continued producing and marketing PCB products for limited applications until 1977.

E. The ordinary and intended use of Old Monsanto’s PCB mixtures has caused widespread PCB contamination in Maine

133. Substantially all PCB contamination in Maine is attributable to PCBs manufactured, marketed, and sold by Monsanto—which was virtually the sole U.S. manufacturer of PCBs from 1935 until PCBs were restricted by EPA in the late 1970s.

134. From 1960 to the mid-1970s alone, Old Monsanto sold at least hundreds of thousands of pounds of commercial PCB mixtures to customers in Maine.

135. Most PCB contamination in Maine has been released into the environment as the inevitable result of uses and disposal practices that Monsanto itself recommended. For example:

- a. Monsanto sold PCBs for use in “open” applications, such as paints, household products, and dust suppressants, where PCBs are exposed directly to the environment. In an internal memorandum from 1969, Old Monsanto recognized that “[i]n one application alone (highway paints), one million lbs/year are used. Through abrasion and leaching we can assume that nearly all of this Aroclor winds up in the environment.”

- b. PCBs are also discharged from existing inventories of PCB-containing products such as older electrical equipment and other “closed applications” that Monsanto falsely said would prevent PCB releases into the environment.
- c. Another major source of PCB contamination is landfills—*i.e.*, the landfills that Monsanto instructed others to use to dispose PCBs, even though it knew these PCBs would “eventually enter the environment.”
- d. Finally, for years Monsanto also advised customers to vent PCBs directly into the air and to dump them down the drain or into streams. Because PCBs are both highly persistent and semivolatile, these PCBs continue to remain in the environment but redistribute themselves from one medium to another—*e.g.*, soil to water, water to the atmosphere, the atmosphere to water, sediment to water.

136. Old Monsanto’s continued aggressive production and marketing of PCB formulations was particularly reckless because, as Old Monsanto recognized, these PCB mixtures were not necessary for many of the uses for which Old Monsanto marketed them nor superior over alternative products.

137. Indeed, Old Monsanto’s internal documents acknowledge that its PCB-containing dielectric fluids never offered any real advantage to non-PCB fluids. For example, a document concerning the company’s product strategy for dielectric fluids reports: “[T]he incidence of explosion with mineral oil was actually lower than with askarel! This in addition to the economic disadvantage of askarel leads to the embarrassing question of why bother to use askarel, and lends an ear to complaints from the workers who dislike the odor, irritating and toxic qualities of our material.”

138. Likewise, many chemicals could perform the function of PCBs in various “open use” applications, such as adhesives or varnishes, such that Old Monsanto never needed to introduce environmentally hazardous PCBs when manufacturing products for these types of uses.

139. Old Monsanto never advised the State or the public that its PCB mixtures are toxic to human and environmental health. Nor did it issue public warning or instruction about PCBs or the health and environmental safety hazards they present. Indeed, as alleged above, Old Monsanto denied that such hazards existed in their communications with public entities and the general public.

F. Impaired waterbodies and other natural resources in Maine

140. In general, PCBs are one of the principal causes of impairment of Maine waterbodies.

141. Like other states, Maine prepares water quality monitoring and assessment reports to satisfy its listing and reporting obligations under the Clean Water Act, sections 303(d) and 305(b), 33 U.S.C. §§ 1313(d) and 1315(b).

142. The most recent (May 2022) Maine Integrated Water Quality Report and Section 303(d) List (the “Integrated Report”) identifies over 400 Maine stream and river miles, nearly 3,000 square miles, or over 1.8 million acres, of Maine estuarine and marine waters, and over 200 wetland acres, as PCB-impaired—that is, impaired for one or more beneficial uses due to excessive PCB contamination.

143. The Integrated Report identifies portions of the following Maine waterbodies as impaired by excessive levels of PCBs:

- a. Penobscot River;
- b. Kennebec River;
- c. Sebasticook River (Mainstem);

- d. Sebasticook River (West Branch);
- e. Sebasticook River (East Branch);
- f. Merrymeeting Bay;
- g. Androscoggin River;
- h. Red Brook;
- i. Salmon Falls River;
- j. East Branch Sebasticook River Wetland (between Corundel Pond and Sebasticook Lake, wetland site W-080); and
- k. All estuarine and marine waters capable of supporting American lobster, including all ocean acres under Maine's jurisdiction.

144. Additionally, the Integrated Report identifies certain Maine waterbodies at which elevated PCB levels have been detected in sediments and/or fish tissue, but which do not qualify as "impaired," including Little Madawaska River and Greenlaw Brook.

145. In 1993, Maine created a Surface Water Ambient Toxics ("SWAT") Monitoring Program to focus on controlling toxics, including PCBs, in Maine surface waters. The SWAT program supports the State's fish and shellfish consumption advisory programs administered by the Maine Centers for Disease Control and Prevention ("CDC"), and provides information to the public regarding the health of fish populations and other aquatic life on a statewide basis.

146. Due to elevated toxics levels, including PCBs, Maine CDC has issued consumption advisories limiting intake of any fish species collected from the PCB-impaired freshwater sources identified above—in some cases advising that no fish species be consumed at all, and in others advising that intake should be limited to 1-2 meals per month or 6-12 meals per year.

147. Similarly, Maine CDC has issued advisories applicable to PCB-impaired saltwater sources. In particular, Maine CDC advises no consumption of lobster tomalley due to elevated PCB concentrations, and that consumption of striped bass, bluefish, shark, swordfish, king mackerel, tilefish, and all other ocean fish or shellfish be restricted. Pregnant and nursing women, women who may become pregnant, and children under 8 years of age are advised to avoid all of these species, and all other individuals are advised to limit their intake of these species to a small number of meals per month or per year.

148. PCB levels in fish and shellfish are a significant concern for public health and vitality of ecosystems in Maine. Maine CDC has had advisories and restrictions such as those noted above in place for many years, and reevaluates them on a periodic basis to account for new data.

149. Maine subsistence and recreational anglers interested in collecting and consuming fish and shellfish from Maine waters, and the related economy, have been adversely affected by fish and shellfish consumption advisories compelled by PCB contamination.

150. Moreover, PCBs do not only adversely impact fish and shellfish in Maine. PCBs *in fish and shellfish are taken up by other animals that consume aquatic animals as food, posing a threat to aquatic and other wildlife higher up in the food chain in Maine, including waterfowl and a host of other fish-eating species.*

151. PCB contamination of fish and other aquatic animals and wildlife adversely affect not only the health of such animals and Maine residents' ability to enjoy their consumption, but also limit recreational opportunities available within Maine.

152. Contamination of Maine's waterbodies and aquatic life attributable to Monsanto's misconduct has for decades curtailed (and will continue to curtail well into the future) the ability of Mainers to consume local fish and shellfish and enjoy recreation at and near the State's

impacted waterbodies at great cost to Maine subsistence and sport fishers, as well as the Maine public and the State itself.

153. The State has also spent considerable time and money to implement and educate the public about its PCB advisories, none of which would have been necessary but for Monsanto's sale and dissemination of toxic PCB mixtures, which, when used as intended, would inevitably contaminate natural resources and endanger people, animals, and the environment.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Public Nuisance

154. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

155. PCB contamination in Maine constitutes an unreasonable interference with rights common to the general public. Among other things, PCBs threaten public health, interfere with Maine residents' ability to consume fish and shellfish, and interfere with Maine residents' ability to safely enjoy water bodies and other natural resources throughout Maine.

156. *Monsanto caused PCB contamination by making and selling PCBs for use in applications where eventual releases into the Maine environment were inevitable on a mass scale. Monsanto also caused this contamination by its misstatements related to disposal of PCB-containing products and related to whether its PCB products were safe for their intended uses.*

157. Monsanto knew when it made, marketed, and sold PCBs that persistent, widespread PCB contamination in Maine was substantially certain to result from its conduct.

158. This interference with public rights caused by PCB contamination outweighs any utility or benefit derived from Monsanto's conduct, and is severe and greater than the State and its residents should be required to bear without compensation.

159. As a direct and proximate result of Defendants' acts and omissions, the State's natural resources and property are contaminated with PCBs. The State has incurred, is incurring, and will incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs and expenses related to contamination of the State's natural resources and property, for which Defendants are jointly and severally liable.

160. As a further direct and proximate result of Defendants' acts and omissions, the State has sustained and will sustain other substantial expenses and damages, including damages for loss of use and enjoyment, for which Defendants are jointly and severally liable.

SECOND CAUSE OF ACTION

Private Nuisance

161. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

162. The State's property and public trust resources have been contaminated by PCBs as a direct and proximate result of the intentional and unreasonable conduct of Defendants, all as alleged in this Complaint. These resources and property include beds and banks of surface water bodies and resources held in trust by the State, including, for example, and without limitation, those identified in paragraph 143 of this Complaint.

163. As a direct and proximate result of Defendants' acts and omissions creating the above-described nuisance, the State has suffered injuries from contamination of State-owned property and public trust resources. Defendants' acts and omissions have substantially, intentionally, and unreasonably interfered with the State's interests in its property and public trust resources. This harm far outweighs any utility or benefit derived from Defendants' conduct, and is severe and greater than the State should be required to bear without compensation.

164. As a direct and proximate result of Defendants' acts and omissions, the State's property and public trust resources were and are contaminated with PCBs. The State has incurred, is incurring, and will incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring and/or other costs and expenses related to contamination of the State's property and public trust resources, for which Defendants are jointly and severally liable.

165. As a further direct and proximate result of Defendants' acts and omissions, the State has sustained and will sustain other expenses and damages, including damages for loss of use and enjoyment, for which Defendants are jointly and severally liable.

THIRD CAUSE OF ACTION

Statutory Nuisance - 17 M.R.S. §§ 2701 & 2802

166. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

167. Under 17 M.R.S. § 2701, "[a]ny person injured in his comfort, property or the enjoyment of his estate by a common and public or a private nuisance may maintain against the offender a civil action for his damages, unless otherwise specially provided."

168. Under 17 M.R.S. § 2802, such nuisances specifically include the "corrupting or rendering unwholesome or impure the water of a river, stream, pond or aquifer."

169. As set forth at length above, Defendants have "corrupted" or "render[ed] unwholesome or impure" the water of rivers, streams, and/or ponds throughout the State by engaging in the acts and omissions alleged in this Complaint. For example, and as shown above, PCBs are associated with significant harmful health effects in humans and wildlife, including at low concentrations.

170. Defendants' corruption of rivers, streams, and/or ponds caused unreasonable harm by contaminating such rivers, streams, and/or ponds and other State natural resources and property.

171. As a result of Defendants' actions, PCBs have profoundly and unreasonably affected rivers, streams, ponds, and estuarine and marine waters in the State, compromising their use for recreational and commercial purposes, and risking public health via exposure to PCBs. And as a result of Defendants' actions, the PCB contamination poses an extraordinary and unjust financial burden on the State and its citizens, who bear the costs of testing, monitoring, and remediation although Defendants profited from the manufacturing, marketing, distribution, and/or sale of PCBs and PCB-containing products.

172. As a direct and proximate result of Defendants' acts and omissions, rivers, streams, ponds, and other natural resources in the State were and are contaminated with PCBs. The State has incurred, is incurring, and will incur investigation, remediation, cleanup, restoration, removal, treatment, and monitoring costs and expenses related to contamination of rivers, streams, ponds, and other resources in the State, for which Defendants are jointly and severally liable.

173. As a further direct and proximate result of Defendants' acts and omissions, the State has sustained and will sustain other substantial expenses and damages, for which Defendants are jointly and severally liable.

174. Maine statutory law also authorizes the State to seek equitable relief, in addition to damages, for the unreasonable harm caused by PCB contamination, including an order that the nuisance be abated or removed at the expense of Defendants. 17 M.R.S. §§ 2702, 2706.

FOURTH CAUSE OF ACTION

Common-Law Trespass

175. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

176. The State has significant property interests in the natural resources of the State. These property rights and interests include, but are not limited to, the State's public trust and *parens patriae* interests and authority in protecting such natural resources from contamination and injury.

177. A trustee by definition is authorized to take action to protect trust property as if the trustee were the owner of the property.

178. The State also brings this action in its *parens patriae* capacity on behalf of its citizens to protect quasi-sovereign interests, including the integrity of the State's natural resources. The State in its *parens patriae* capacity seeks relief for the invasion of its citizens' possessory interests by PCBs.

179. The State never authorized Defendants' invasion of its natural resources and property with PCBs.

180. The State owns in fee certain property within the State, including lands and some water wells.

181. At all times relevant to this Complaint, Defendants knew, or in the exercise of reasonable care should have known, that PCBs are hazardous to natural resources and property, including surface waters and including the property and interests of the State.

182. Defendants' acts and omissions directly and proximately caused and continue to cause PCBs to intrude onto and contaminate State natural resources and property, including without limitation groundwater, surface waters, soils, sediments, fish, and shellfish.

183. At the time of Defendants' acts and omissions, Defendants knew with substantial certainty that PCBs would reach onto and contaminate State natural resources and property, including groundwater, surface waters, soils, sediments, fish, and shellfish. Defendants knew and understood, or should have known and understood, the properties of PCBs, including through their knowledge and experience regarding contamination from PCBs at their own facilities where they manufactured and/or used PCBs and other conduct alleged in this Complaint. Despite this knowledge, Defendants manufactured, marketed, distributed, promoted, and sold PCBs and PCB-containing products within this State with a profit motive in a way that has harmed the State.

184. As a direct and proximate result of the Defendants' acts and omissions, the State has been damaged and is entitled to compensatory damages for the costs of investigation, remediation, and treatment, damages for loss of use and enjoyment of State natural resources and property, cost of restoring State natural resources and property to their original conditions as if the trespass had not occurred, and/or other relief the State may elect at trial.

185. As a direct and proximate result of Defendants' acts and omissions, the State's natural resources and property are contaminated with PCBs. The State has incurred, is incurring, and will incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs and expenses related to contamination of the State's natural resources and property, for which Defendants are jointly and severally liable.

186. As a further direct and proximate result of Defendants' acts and omissions, the State has sustained and will sustain other substantial expenses and damages, including damages for loss of use and enjoyment, for which Defendants are jointly and severally liable.

FIFTH CAUSE OF ACTION

Strict Liability for Design Defect and/or Defective Product – 14 M.R.S. § 221

187. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

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

189. As designers, manufacturers, marketers, distributors, and/or sellers of PCBs and PCB-containing products, Defendants owed a duty to all persons whom Defendants' PCBs might foreseeably harm, including the State and its citizens, not to market any product that is unreasonably dangerous for its intended and foreseeable uses.

190. Defendants represented, asserted, claimed, and/or warranted that the commercial PCB mixtures and PCB-containing products they sold were safe for their intended and foreseeable uses.

191. When Defendants placed such PCBs and PCB-containing products into the stream of commerce and delivered them into the State (and areas affecting the State's natural resources and property), those products were defective, unreasonably dangerous, and not reasonably suited for their intended, foreseeable, and ordinary storage, handling, and uses, including for the following reasons:

- a. Unintended releases of PCBs are commonplace;
- b. PCBs are released to the environment through the normal and foreseen use of the commercial PCBs and PCB-containing products sold by Defendants;
- c. When PCBs are released into the environment, PCBs have a tendency to volatilize and to migrate great distances;

- d. When PCBs are released into the environment, PCBs persist over long periods of time because PCBs are recalcitrant to biodegradation and bioremediation;
- e. PCBs bioaccumulate in humans and wildlife;
- f. Very low concentrations of PCBs can impair the beneficial uses of groundwater, surface waters, fish and shellfish, and other natural resources;
- g. PCBs pose risks to human health;
- h. Defendants, with knowledge of the risks, failed to use reasonable care in the design of their commercial PCBs and PCB-containing products;
- i. PCBs pose greater dangers to State natural resources and property than would be expected by ordinary persons such as the State, users, and the general public exercising reasonable care;
- j. The risks that PCBs and PCB-containing products pose to State natural resources and property outweigh their utility in making products more flexible and malleable, among other supposed benefits; and
- k. Safer alternatives to PCBs and PCB-containing products have existed and been available to Defendants at all times relevant to this Complaint.

192. The above-described defects exceeded the knowledge of ordinary persons such as the State, users, and the general public exercising reasonable care.

193. Commercial PCBs and PCB-containing products were distributed and sold in the manner intended or reasonably foreseen by the Defendants, or as should have been reasonably foreseen by Defendants.

194. Defendants' commercial PCBs and PCB-containing products reached consumers and the environment in Maine in a condition substantially unchanged from that in which they left Defendants' control.

195. Defendants' commercial PCBs and PCB-containing products failed to perform as safely as an ordinary consumer would expect when used in their intended and reasonably foreseeable manner.

196. As a direct and proximate result of Defendants' acts and omissions, the State's natural resources and property are contaminated with PCBs, and it was reasonably foreseeable that the PCB contamination described herein would occur as a result of Defendants' conduct. The State has incurred, is incurring, and will incur investigation, remediation, cleanup, restoration, removal, treatment, and monitoring, and other costs and expenses related to such contamination of State natural resources and property, for which Defendants are strictly, jointly, and severally liable.

197. As a further direct and proximate result of the acts and omissions of Defendants, the State has sustained and will sustain other substantial expenses and damages, including damages for loss of use and enjoyment, for which Defendants are strictly, jointly, and severally liable under 14 M.R.S. § 221.

SIXTH CAUSE OF ACTION

Strict Liability for Failure to Warn - 14 M.R.S. § 221

198. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

199. Strict liability attaches to manufacturers when, by the failure to provide adequate warnings about its hazards, a product is sold in an unreasonably dangerous condition.

200. As manufacturers, marketers, distributors, promoters, and/or sellers of PCBs and PCB-containing products, Defendants had a duty to issue warnings to the State, the public, public officials, consumers, and users of the risks posed by such PCBs.

201. Defendants knew that their commercial PCBs and PCB-containing products would be purchased, transported, stored, handled, used, and disposed of, including within Maine, without notice of the hazards that those PCBs and PCB-containing products pose to State natural resources and property.

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

203. At all times relevant to this Complaint, Defendants have had actual and/or constructive knowledge of facts, including the following, which rendered such PCBs and PCB-containing products hazardous to State natural resources and property:

- a. Unintended releases of PCBs are commonplace;
- b. PCBs are released to the environment through the normal and foreseen use of the commercial PCBs and PCB-containing products sold by Defendants;
- c. When PCBs are released into the environment, PCBs have a tendency to volatilize and to migrate great distances;
- d. When PCBs are released into the environment, PCBs persist over long periods of time because PCBs are recalcitrant to biodegradation and bioremediation;
- e. PCBs bioaccumulate in humans and wildlife;

- f. Very low concentrations of PCBs can impair the beneficial uses of groundwater, surface waters, fish and shellfish, and other natural resources; and
- g. PCBs pose risks to human health.

204. The foregoing facts relating to the hazards that Defendants' commercial PCBs and PCB-containing products pose to State natural resources and property are not the sort of facts that, at the relevant times, the State, users, consumers, or the general public could ordinarily discover or protect themselves against, absent sufficient warnings.

205. Defendants breached their duty to warn by unreasonably failing to provide warnings concerning any of the facts alleged here to the State, Maine public officials, users, consumers, and/or the general public.

206. Defendants' failure to warn proximately caused reasonably foreseeable injuries to the State. The State and others would have heeded legally adequate warnings, and commercial PCBs and PCB-containing products would not have gained approval in the marketplace for use in household, consumer, industrial, and other products in Maine, and/or such PCBs and PCB-containing products would have been treated differently in terms of procedures for handling, storage, use, disposal, emergency response, and/or environmental clean-up.

207. As a direct and proximate result of Defendants' acts and omissions, the State's natural resources and property are contaminated with PCBs. The State has incurred, is incurring, and will incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs and expenses related to contamination of the State's natural resources and property, for which Defendants are strictly, jointly, and severally liable.

208. As a further direct and proximate result of the acts and omissions of Defendants, the State has sustained and will sustain other substantial expenses and damages, including

damages for loss of use and enjoyment, for which Defendants are strictly, jointly, and severally liable under 14 M.R.S. § 221.

SEVENTH CAUSE OF ACTION

Negligence

209. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

210. As manufacturers, marketers, distributors, promoters, and/or sellers of commercial PCBs and PCB-containing products, Defendants owed a duty to the State as well as to all persons whom Defendants' PCBs and PCB-containing products might foreseeably harm to exercise due care in the design, manufacturing, promotion, marketing, sale, distribution, testing, labeling, use, warning, and instructing for use of PCBs and PCB-containing products.

211. Defendants had a duty and the financial and technical means to test such PCBs and PCB-containing products and to warn Maine public officials, consumers, users, and the general public of the hazardous characteristics of PCBs.

212. Defendants had a duty to not contaminate the environment in Maine.

213. Defendants had a duty to not contaminate State natural resources and State-owned property.

214. Defendants represented and claimed that their PCBs and PCB-containing products did not require any different or special handling or precautions. Any warnings that Defendants did provide were generic and did not suffice to warn reasonable users of the dangers to the environment posed by these chemicals.

215. At all times relevant to this Complaint, Defendants knew or should have known of the following environmental and health risks, among others:

- a. Unintended releases of PCBs are commonplace;

- b. PCBs are released to the environment through the normal and foreseen use of the commercial PCBs and PCB-containing products sold by Defendants;
- c. When PCBs are released into the environment, PCBs have a tendency to volatilize and to migrate great distances;
- d. When PCBs are released into the environment, PCBs persist over long periods of time because PCBs are recalcitrant to biodegradation and bioremediation;
- e. PCBs bioaccumulate in humans and wildlife;
- f. Very low concentrations of PCBs can impair the beneficial uses of groundwater, surface waters, fish and shellfish, and other natural resources; and
- g. PCBs pose risks to human health.

216. The foregoing facts relate to the hazards that Defendants' commercial PCBs and PCB-containing products pose to State natural resources and property, and are not the sort of facts that the State, users, consumers, and the general public could ordinarily discover or protect themselves against, absent sufficient warnings.

217. The commercial PCBs and PCB-containing products manufactured, marketed, distributed, promoted, and/or sold by Defendants were used in a normal and foreseeable manner.

218. Defendants have negligently breached their duties of due care to the State and Maine consumers, users, and the general public by, among other things:

- a. Promoting and defending PCBs and PCB-containing products while concealing the threat such PCBs and PCB-containing products pose to natural resources and property;

- b. Marketing, touting, and otherwise promoting the benefits of PCBs and PCB-containing products without disclosing the truth about the environmental and potential health hazards posed by PCBs;
- c. Failing to eliminate or minimize the harmful impacts and risks posed by PCBs and PCB-containing products;
- d. Failing to adequately curtail or reduce the distribution of PCBs and PCB-containing products for applications known to cause direct and immediate environmental harm;
- e. Failing to instruct the State, consumers, users, and the general public about the safe handling, use, and disposal of PCBs and PCB-containing products; and/or
- f. Failing to warn and instruct the State and Maine consumers, users, and the general public about the risks to natural resources posed by PCBs and PCB-containing products, and about the necessary precautions and steps to prevent or minimize releases of PCBs in distribution, storage, use and disposal, and about how to remediate such releases promptly.

219. As a direct and proximate result of Defendants' acts and omissions, the State's natural resources and property are contaminated with PCBs. The State has incurred, is incurring, and will incur investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs and expenses related to contamination of the State's natural resources and property, for which Defendants are jointly and severally liable.

220. As a further direct and proximate result of the acts and omissions of the Defendants, the State has sustained and will sustain other substantial expenses and damages,

including damages for loss of use and enjoyment, for which Defendants are jointly and severally liable.

PUNITIVE DAMAGES

221. Defendants made intentional misrepresentations about PCBs so as to be able to continue to produce, market, and sell products they knew would cause mass contamination in Maine. This conduct was outrageous, reprehensible, and malicious. The State requests an award of punitive damages to the maximum extent permitted by law in an amount reasonable, appropriate, and sufficient to punish Defendants and deter the same or similar tortious acts in the future.

VII. PRAYER FOR RELIEF

The State of Maine seeks judgment against all Defendants for:

A. Compensatory damages arising from PCB contamination and injury to State natural resources and property, including without limitation surface waters, sediments, soils, biota, fish, shellfish, wildlife, and their associated uses, according to proof, including, but not limited to:

- (i) natural resource damages;
- (ii) loss-of-use damages;
- (iii) costs of investigation;
- (iv) costs of testing and monitoring;
- (v) costs of remediating PCBs from natural resources, including groundwater, surface waters, soils, sediments, and other natural resources;
- (vi) costs of remediating PCB contamination at release sites;

- (vii) any other costs or other expenditures incurred to address PCB contamination and injury; and
- (viii) interest on the damages according to law;

B. An order compelling Defendants to abate the PCB public nuisance, including by establishing an abatement fund to investigate, remove, treat, remediate, clean up, monitor, and otherwise mitigate PCB contamination in Maine;

C. An order compelling Defendants to abate PCB contamination by removing PCBs from State natural resources and property and/or by paying the State's costs to abate PCB contamination in Maine;

D. Punitive damages;

E. Costs (including reasonable attorney fees, court costs, and other expenses of litigation);

F. Prejudgment interest;

G. An order compelling Defendants to pay for all other damages sustained by the State in its public trustee, *parens patriae*, and other capacities as a direct and proximate result of Defendants' acts and omissions alleged herein; and

H. Any other and further relief as the Court deems just, proper, and equitable.

VIII. JURY TRIAL DEMANDED

The State demands a trial by jury on all claims so triable.

Dated: April 11, 2024

STATE OF MAINE

AARON M. FREY
ATTORNEY GENERAL



Aaron M. Frey (Bar No. 004325)
Scott Boak (Bar No. 009150)
Robert Martin (Bar No. 006632)
Assistant Attorneys General
6 State House Station
Augusta, Maine 04333
(207) 626-8566
Email: Scott.Boak@maine.gov
Robert.Martin@maine.gov

Matthew F. Pawa*
Wesley Kelman*
SEEGER WEISS LLP
1280 Centre Street, Suite 230
Newton Centre, MA 02459
(617) 641-9550
Email: MPawa@seegerweiss.com
WKelman@seegerweiss.com

Kyle J. McGee*
Viola Vetter*
Jason H. Wilson*
Juliana B. Carter*
GRANT & EISENHOFER P.A.
123 Justison Street
Wilmington, DE 19801
(302) 622-7000
Email: kmcgee@gelaw.com
vveter@gelaw.com
jwilson@gelaw.com
jcarter@gelaw.com

**Pro hac vice* forthcoming