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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. MONSANTO COMPANY, SOLUTIA, INC., and PHARMACIA CORPORATION, and DOES 1 through 100, Defendants.	NO. COMPLAINT FOR DAMAGES

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I. INTRODUCTION

1. Polychlorinated biphenyls (or "PCBs") are man-made chemical compounds that have become notorious as global environmental contaminants — found in bays, oceans, rivers, streams, soil, and air. As a result, PCBs have been detected in the tissues of every species tested, including marine life, various animals and birds, plants and trees, and humans.

2. The extent of environmental PCB contamination is troubling because PCBs cause a variety of adverse health effects. In humans, PCB exposure is associated with cancer as well as serious non-cancer health effects, including injury to the immune system, reproductive system, nervous system, endocrine system and other health effects. In addition, PCBs harm populations of fish, birds, and other animal life.

3. Monsanto Company was the sole manufacturer of PCBs in the United States from 1935 to 1979, and trademarked the name "Aroclor" for certain PCB compounds. Although Monsanto knew for decades that PCBs were toxic and knew that they were widely contaminating all natural resources and living organisms, Monsanto concealed these facts and continued producing PCBs until Congress enacted the Toxic Substances Control Act ("TSCA"), which banned the manufacture of PCBs by January 1, 1979.

4. PCBs were used in many industrial and commercial applications such as paint, caulking, transformers, capacitors, coolants, hydraulic fluids, plasticizers, sealants, inks, lubricants, and other uses. PCBs regularly leach, leak, off-gas, and escape their intended applications, contaminating runoff during naturally occurring storm and rain events.

5. As a result, PCBs contaminate waterways, waterbodies, sediment, fish, and other land, water, and wildlife throughout the state of Washington. PCBs bioaccumulate in fish and humans, causing PCB levels hazardous to human health.

6. The following is a list of water bodies within the state of Washington that are contaminated with Monsanto's PCBs, as measured in fish tissue or sediment:

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a. Ward Lake, Elwha River, Yakima River, Commencement Bay (Inner), Budd Inlet (Inner), Eagle Harbor, Chehalis River, Columbia River, Snake River (Wallula Lake), Lower Crab Creek, Lake Spokane, Spokane River, Duwamish West Waterway, Little Spokane River, Lake Whatcom, Skagit River, Duwamish River, Wenatchee River, Columbia River (Franklin D. Roosevelt Lake), Cowlitz River, Lake Padden, Lake Samish, Green Lake, McIntosh Lake, Liberty Lake, Columbia River (Lake Umatilla), Snake River (Lower Granite Lake), Commencement Bay (Outer), Dalco Passage and East Passage, Balch and Cormorant Passages, Squaxin, Peale, and Pickering Passages, Puget Sound (Central), Case Inlet and Dana Passage, Carr Inlet, Hale Passage (South), Colvos Passage, American Lake, Moses Lake, Vancouver Lake, West Medical Lake, Banks Lake, Sprague Lake, Calligan Lake, Lake Washington, Lake Ballinger, Bead Lake, Columbia River (Lake Entiat), Haven Lake, Leland Lake, Long Lake, Loon Lake, Mason Lake, Mayfield Lake, Lake Meridian, Merwin Lake, Mountain Lake, Newman Lake, White Salmon River, Offutt Lake, Pothole Resevoir, Pend Oreille River, Sacajawea Lake, Lake Sammamish, Lake Sawyer, Silver Lake, Snake River (Sacajawea Lake), Snake River, Snohomish River, Summit Lake, Cowiche Creek, Lake River, Budd Inlet (Outer), Port Orchard, Agate Passage, and Rich Passage, Puget Sound (North-Central), Possession Sound (North), Port Townsend (Inner), Puget Sound (South), Duwamish Waterway, Elliott Bay, Sinclair Inlet, Strait of Juan De Fuca (Central), Port Angeles Harbor, Strait of Juan De Fuca (West), Alder Lake, Big Lake, Bumping Lake, Lake Campbell, Chapman Lake, Lake Chelan, Cle Elum Lake, Fish Lake, Lake Goodwin, Icicle Creek, Kachess Lake, Keechelus Lake, Klickitat River, Molson Lake, Nason Creek, Okanogan

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River, Samish River, Similkameen River, Skykomish River, Snoqualmie River, Stevens Lake, Sullivan Lake, Unnamed Lake, Lake Wenatchee, Bellingham Bay (Inner), Port Gamble Bay, Walla Walla River, Palouse River (aka North Fork Palouse River), Palouse River, S.F., Palouse River, Thea Foss Waterway, and others.

7. Monsanto's PCBs are present and have contaminated the public natural resources of other parts of the state, including but not limited to other waters, sediment, land, submerged lands, tidelands, and wildlife.

8. Monsanto's PCBs have caused and will continue to cause direct injury to Washington's public natural resources.

9. The State of Washington has incurred significant costs to identify and reduce sources of Monsanto's PCBs entering and contaminating public natural resources. The State has also incurred significant costs towards monitoring, investigation, analysis, and remediation of Monsanto's PCBs in the environment. The State's residents have borne costs of treating and managing PCB-contaminated water.

10. The State incurs and will continue to incur significant costs into the future due to the presence of Monsanto's PCBs.

II. PARTIES

11. The State brings this suit pursuant to RCW 7.48.010, et seq. and any other applicable codes or forms of relief available for monetary damages and removal of the public nuisance caused by Monsanto's PCBs.

12. The State is trustee of certain public natural resources, including certain lands, aquatic lands, wildlife, and state waters within state boundaries including but not limited to 3 million acres of state trust lands and 2.6 million acres of state-owned aquatic lands in public trust. In addition, the State manages in public trust 56 Natural Area Preserves and 36 Natural Resources Conservation Areas on more than 152,000 acres statewide.

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13. The State also preserves, protects, and perpetuates fish, wildlife, and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities.

14. The State has standing to bring this lawsuit as trustee of all aforementioned public natural resources.

15. The State also brings this action in its *parens patriae* capacity for the benefit of the state's residents, who are affected by the presence of PCBs in the state's public natural resources and/or who suffer monetary damages through payment of stormwater impact fees, taxes, and other monetary assessments that contribute in part to the cleanup of PCBs. The state's residents also suffer monetary damages through the loss of use of the state's public natural resources, including catching, selling, and/or consuming fish within state waters.

16. Monsanto's PCB contamination constitutes injury to the State's public natural resources and to other property and waters of the State, for which the State seeks damages, including on behalf of itself and on behalf of its residents in its *parens patriae* capacity.

17. The State has a quasi-sovereign interest in and trustee obligation to protect the State's public natural resources, including lands, aquatic lands, waters, wildlife, fish, and other natural resources.

18. The State has a proprietary interest in protecting all property owned by the State and has an interest in remediating the contamination of its exclusive property and in preventing future contamination.

19. The State has spent and will continue to spend many millions of dollars to remediate Monsanto's PCBs, including through grants to local governments.

20. Injury to public natural resources caused by Monsanto's PCBs has resulted in loss of public use and enjoyment of those resources. The economic value of these natural resources, as well as the cost of restoring them, is substantial.

21. Defendant Monsanto Company is a Delaware corporation with its principal place of business in St. Louis, Missouri.

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22. Defendant Solutia, Inc., is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri.

23. Defendant Pharmacia LLC (formerly known as "Pharmacia Corporation" and successor to the original Monsanto Company) is a Delaware LLC with its principal place of business in Peapack, New Jersey. Pharmacia is now a wholly-owned subsidiary of Pfizer, Inc. The State is not asserting claims against Pharmacia for costs of investigating and remediating contamination in the Lower Duwamish. In all other respects, the State's claims apply to Pharmacia.

24. The original Monsanto Company ("Old Monsanto") operated an agricultural products business, a pharmaceutical and nutrition business, and a chemical products business. Old Monsanto began manufacturing PCBs in the 1930s and continued to manufacture commercial PCBs until the late 1970s.

25. Through a series of transactions beginning in approximately 1997, Old Monsanto's businesses were spun off to form three separate corporations. The corporation now known as Monsanto operates Old Monsanto's agricultural products business. Old Monsanto's chemical products business is now operated by Solutia. Old Monsanto's pharmaceuticals business is now operated by Pharmacia.

26. Solutia was organized by Old Monsanto to own and operate its chemical manufacturing business. Solutia assumed the operations, assets, and liabilities of Old Monsanto's chemicals business.[1]

27. Although Solutia assumed and agreed to indemnify Pharmacia (then known as

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[1] See MONSANTO COMPANY'S ANSWER TO THE COMPLAINT AND JURY DEMAND, *Town of Lexington v. Pharmacia Corp., Solutia, Inc., and Monsanto Company*, C.A. No. 12-CV-11645, D. Mass. (October 8, 2013); see also Relationships Among Monsanto Company, Pharmacia Corporation, Pfizer Inc., and Solutia Inc., http://www.monsanto.com/whoweare/pages/monsanto-relationships-pfizer-solutia.aspx (last accessed November 11, 2016).

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Monsanto Company) 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.[2]

28. In 2003, Solutia filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Solutia's reorganization was completed in 2008. In connection with Solutia's Plan of Reorganization, Solutia, Pharmacia and New Monsanto entered into several agreements under which Monsanto continues to manage and assume financial responsibility for certain tort litigation and environmental remediation related to the chemicals business.[3]

29. Monsanto represented in its most recent Form 10-K (for the fiscal year ending August 31, 2016): "Monsanto is involved in environmental remediation and legal proceedings to which Monsanto is party in its own name and proceedings to which its former parent, Pharmacia LLC ('Pharmacia') or its former subsidiary, Solutia, Inc. ('Solutia') 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 document specifies that the company holds $545 million in that reserve.[4]

30. Monsanto, Solutia, and Pharmacia are collectively referred to in this Complaint as "Defendants."

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[2] *See id.*

[3] *See* Monsanto's Form 8-K (March 24, 2008), and Form 10-Q (June 27, 2008), available at http://www.monsanto.com/investors/pages/sec-filings.aspx (last accessed November 11, 2016).

[4] See Monsanto Company, Form 10-K (for the fiscal year ended Aug. 31, 2016), available at http://www.monsanto.com/investors/pages/sec-filings.aspx?page=0&group=1&limit=1 (last accessed November 16, 2016).

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III. JURISDICTION AND VENUE

31. The public natural resources that are the subject of this suit are all within the state of Washington. The State of Washington is not a citizen of any state for diversity purposes, and thus no diversity jurisdiction exists as a basis for federal jurisdiction. No federal subject matter jurisdiction is invoked herein.

32. Venue is appropriate in King County under RCW 4.12.010 and 4.12.020 because some part of the property that is the subject to the action is located there, and because some part of the cause of action arose there. Property contaminated by Defendants' PCBs is located throughout the state, including in King County. The injury created by Defendants' conduct is located throughout the state, including King County. The property and injury in question includes but is not limited to water, wildlife, land, and submerged lands, including those within King County. Monsanto's products containing PCBs were sold and used in King County.

IV. FACTUAL ALLEGATIONS

A. PCBs Are Toxic Chemicals That Cause Environmental Contamination

33. Polychlorinated biphenyl, or "PCB," is a molecule comprised of chlorine atoms attached to a double carbon-hydrogen ring (a "biphenyl" ring). A "PCB congener" is any single, unique chemical compound in the PCB category. Two hundred nine congeners have been identified.[5]

34. PCBs were generally manufactured as mixtures of congeners. From approximately 1935 to 1979, Monsanto Company was the only manufacturer in the United States that intentionally produced PCBs for commercial use.[6] The most common trade name

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[5] Table of PCB Congeners, available at https://www.epa.gov/pcbs/table-polychlorinated-biphenyl-pcb-congeners (last accessed November 11, 2016).

[6] *See* 116 Cong. Record 11695, 91st Congress, (April 14, 1970) ("Insofar as the Monsanto Co., the sole manufacturer of PCB's is concerned . . . ."); 121 Cong. Record 33879, 94th Congress, (October 23, 1975) ("The sole U.S. producer, Monsanto Co. . . . ."). *See also* Internal

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for PCBs in the United States was "Aroclor," which was trademarked by Old Monsanto.

35. Monsanto's commercially-produced PCBs were used in a wide range of industrial applications in the United States including electrical equipment such as transformers, motor start capacitors, and lighting ballasts. In addition, PCBs were incorporated into a variety of products such as caulks, paints, and sealants.

36. As used in this Complaint, the terms "PCB," "PCBs," "PCB-containing products," and "PCB products" refer to products containing polychlorinated biphenyl congener(s) manufactured for placement into trade or commerce, including any product that forms a component part of or that is subsequently incorporated into another product.

37. PCBs easily migrate or volatilize out of their original source material or enclosure and contaminate environmental media such as air, soil, stormwater, and sediment. For example, PCB compounds volatilize out of building materials (such as caulk) and into the surrounding environment. PCBs can also escape from totally enclosed materials (such as light ballasts) and similarly contaminate and damage the environment.

38. PCBs present serious risks to the health of humans, fish, wildlife, and the environment.

39. Humans may be exposed to PCBs through ingestion, inhalation, and dermal contact. Individuals may inhale PCBs that are emitted into the air. They may also ingest PCBs that are emitted into air and settle onto surfaces that come into contact with food or drinks. And they may absorb PCBs from physical contact with PCBs or PCB-containing materials. Humans may be exposed to PCBs through water contact or consumption of fish from water bodies contaminated with PCBs, including through stormwater.

Monsanto Documents entitled "PCB Presentation to Corporate Development Committee" (Bates Nos. MONS 058730-058752 at 058733) (identifying other producers as "all ex-USA."). ["MONS" and other prefixes refer to Bates Stamped documents assembled by Monsanto and produced in various PCB related cases.]

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40. EPA has determined that Monsanto's PCBs are probable human carcinogens. In 1996, EPA reassessed PCB carcinogenicity, based on data related to Aroclors 1016, 1242, 1254, and 1260. [7] EPA's cancer reassessment was peer reviewed by 15 experts on PCBs, including scientists from government, academia and industry, all of whom agreed that PCBs are probable human carcinogens.

41. The International Agency for Research on Cancer published an assessment in 2015 that asserts an even stronger relationship between PCBs and human cancer. The report explains: "There is sufficient evidence in humans for the carcinogenicity of polychlorinated biphenyls (PCBs). PCBs cause malignant melanoma. Positive associations have been observed for non-Hodgkin lymphoma and cancer of the breast. ... PCBs are carcinogenic to humans ...."[8]

42. In addition, EPA concluded that PCBs are associated with serious non-cancer health effects. From extensive studies of animals and primates using environmentally relevant doses, EPA has found evidence that PCBs exert significant toxic effects, including effects on the immune system, the reproductive system, the nervous system, and the endocrine system.

43. PCBs affect the immune system by causing a significant decrease in the size of the thymus gland, lowered immune response, and decreased resistance to viruses and other infections. The animal studies were not able to identify a level of PCB exposure that did not affect the immune system. Human studies confirmed immune system suppression.

44. Studies of reproductive effects in human populations exposed to PCBs show decreased birth weight and a significant decrease in gestational age with increasing exposures

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[7] EPA, PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures, EPA/600/P-96/001F (September 1996), available at https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=12486&CFID=81083242&CFTOKEN=30145310 (last accessed November 11, 2016).

[8] International Agency for Research on Cancer. IARC monographs on the evaluation of carcinogenic risks to humans, volume 107. Polychlorinated and Polybrominated Biphenyls (2015), available at http://monographs.iarc.fr/ENG/Monographs/vol107/ (last accessed November 11, 2016).

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to PCBs. Animal studies have shown that PCB exposures reduce birth weight, conception rates, live birth rates, and sperm counts.

45. Human and animal studies confirm that PCB exposure causes persistent and significant deficits in neurological development, affecting visual recognition, short-term memory, and learning. Some of these studies were conducted using the types of PCBs most commonly found in human breast milk.

46. PCBs may also disrupt the normal function of the endocrine system. PCBs have been shown to affect thyroid hormone levels in both animals and humans. In animals, decreased thyroid hormone levels have resulted in developmental deficits, including deficits in hearing. PCB exposures have also been associated with changes in thyroid hormone levels in infants in studies conducted in the Netherlands and Japan.

47. Children may be affected to a greater extent than adults. The Agency for Toxic Substances and Disease Registry explained: "Younger children may be particularly vulnerable to PCBs because, compared to adults, they are growing more rapidly and generally have lower and distinct profiles of biotransformation enzymes, as well as much smaller fat deposits for sequestering the lipophilic PCBs."[9]

48. PCBs are known to be toxic to a number of aquatic species and wildlife including fish, marine mammals, reptiles, amphibians, and birds. Exposure is associated with death, compromised immune system function, adverse effects on reproduction, development, and endocrine function. PCB exposure affects liver function, the digestive system, and nervous systems and can promote cancer in a number of animal species. The presence of PCBs can

[9] Agency for Toxic Substances and Disease Registry, Toxicological Profile for Polychlorinated Biphenyls (PCBs), (November 2000), at 381, available at www.atsdr.cdc.gov (last accessed January 20, 2016).

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cause changes in community and ecosystem structure and function.[10]

B. Monsanto Has Long Known of PCBs' Toxicity

49. Monsanto was well aware of scientific literature published in the 1930s that established that inhalation of PCBs in industrial settings resulted in toxic systemic effects in humans.

50. An October 11, 1937, Monsanto memorandum advises that "Experimental work in animals shows that prolonged exposure to Aroclor vapors evolved at high temperatures or by repeated oral ingestion will lead to systemic toxic effects. Repeated bodily contact with the liquid Aroclors may lead to an acne-form skin eruption."[11]

51. A September 20, 1955, memo from Monsanto Medical Director Emmet Kelly set out Monsanto's position with respect to PCB toxicity: "We know Aroclors are toxic but the actual limit has not been precisely defined. It does not make too much difference, it seems to me, because our main worry is what will happen if an individual develops [*sic*] any type of liver disease and gives a history of Aroclor exposure. I am sure the juries would not pay a great deal of attention to [maximum allowable concentrates]."[12]

52. On November 14, 1955, Monsanto's Medical Department provided an opinion that workers should not be allowed to eat lunch in the Aroclor department:

> It has long been the opinion of the Medical Department that eating in process departments is a potentially hazardous procedure that could lead to serious difficulties. While the Aroclors are not particularly hazardous from our own experience, this is a difficult problem to define because early literature work claimed that chlorinated biphenyls were quite toxic materials by ingestion or

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[10] *See* EPA, Understanding PCB Risks, available at http://www.epa.gov/ge-housatonic/understanding-pcb-risks-ge-pittsfieldhousatonic-river-site#WildlifeHumanHealthEffects (last accessed January 20, 2016).

[11] Internal Monsanto memorandum from L.A.Watt, dated October 11, 1937 (Bates No. MONS 061332).

[12] Internal Monsanto correspondence from R. Emmet Kelly, M.D. to Dr. J.W. Barret, dated September 20, 1955, regarding Aroclor Toxicity (Bates No. MONS 095196-7).

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inhalation.[13]

53. On January 21, 1957, Kelly reported that after conducting its own tests, the U.S. Navy decided against using Monsanto's Aroclors: "No matter how we discussed the situation, it was impossible to change their thinking that Pydraul 150 is just too toxic for use in a submarine."[14]

54. In 1966, Kelly reviewed a presentation by Swedish researcher Soren Jensen, who stated that PCBs "appeared to be the most injurious chlorinated compounds of all tested."[15] Jensen refers to a 1939 study associating PCBs with the deaths of three young workers and concluding that "pregnant women and persons who have at any time had any liver disease are particularly susceptible."[16] Kelly did not dispute any of Jensen's remarks, noting only, "As far as the section on toxicology is concerned, it is true that chloracne and liver trouble can result from large doses."[17]

55. On January 29, 1970, Elmer Wheeler of the Medical Department at Monsanto circulated laboratory reports discussing results of animal studies. He noted: "Our interpretation is that the PCB's are exhibiting a greater degree of toxicity in this chronic study than we had anticipated. Secondly, although there are variations depending on species of animals, the PCB's are about the same as DDT in mammals."[18]

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[13] Internal Monsanto correspondence from Jack T. Garret to H.B. Patrick, dated November 14, 1955 (no Bates number).

[14] Internal Monsanto correspondence from R. Emmet Kelly, M.D. to H.I. Armstrong, dated January 21, 1957, regarding Pydraul 150 (Bates No. MONS 095640).

[15] *See* Correspondence from R. Emmet Kelly, M.D. Medical Director to Dr. M.J. Thomas, Research Division, National Cash Register, dated February 27, 1967, forwarding a Photostat of the original paper of Dr. Jensen in Sweden, relating to polychlorinated biphenyls. (Bates Nos. JDGFOX00000037-63).

[16] *Id.* at JDGFOX00000039.

[17] *Id.* at JDGFOX00000037.

[18] Internal Monsanto Memorandum from Elmer F. Wheeler, Medical Department, to D.S. Cameron, Brussels, Dated January 29, 1970, regarding Status of Aroclor Toxicological Studies (Bates No. MONS 098480)

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C. Monsanto Has Long Known That PCBs Were "Global Contaminants" That Harm Animals and Fish

56. At the same time, Monsanto became aware that PCBs were causing widespread contamination of the environment, far beyond the areas of its use.

57. Mr. Kelly reviewed an article by Mr. Jensen, who reported the detection of PCBs in the tissues of fish and wildlife in Sweden.[19] The report noted that PCBs were also detected in the air over London and Hamburg and found in seals caught off the coast of Scotland. Jensen concluded that PCBs can "be presumed to be widespread throughout the world."[20]

58. A December 1968 article by independent scientist Richard Risebrough identified chlorinated hydrocarbons (which include PCBs) as "the most abundant synthetic pollutants present in the global environment."[21] The article reported finding significant concentrations of PCBs in the bodies and eggs of peregrine falcons and 34 other bird species. The report linked PCBs to the rapid decline in peregrine falcon populations in the United States.

59. On March 6, 1969, Monsanto employee W. R. Richard wrote a memorandum discussing Risebrough's article that criticized PCBs as a "toxic substance", "widely spread by air-water; therefore, an uncontrollable pollutant . . . causing extinction of peregrine falcon ... [and] endangering man himself."[22] Richard explained that Monsanto could take steps to reduce PCB releases from its own plants but cautioned, "It will be still more difficult to control other

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[19] New Scientist article entitled "Report of a New Chemical Hazard," dated, December 15, 1966 (Bates No. MONSFOX00003427).

[20] *Id.*

[21] R.W. Risebrough, Polychlorinated Biphenyls in the Global Ecosystem, Nature, Vol. 220 (December 14, 1968).

[22] Internal Monsanto Memorandum from W.R. Richard to E. Wheeler, Dated March 6, 1969, regarding Aroclor Wildlife Accusations (Bates Nos. MONS 096509-096511).

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end uses such as cutting oils, adhesives, plastics, and NCR paper. In this applications [sic] exposure to consumers is greater and the disposal problem becomes complex."[23]

60. On September 9, 1969, Monsanto employee W.R. Richard wrote an interoffice memo titled "Defense of Aroclor."[24] He acknowledged the role of Aroclor in water pollution: "Aroclor product is refractive, will settle out on solids – sewerage sludge – river bottoms, and apparently has a long life." He noted that Aroclors 1254 and 1260 had been found along the Gulf Coast of Florida causing a problem with shrimp; in San Francisco Bay, where it was reported to thin egg shells in birds; and in the Great Lakes. Richard advised that the company could not defend itself against all criticism: "We can't defend vs. everything. Some animals or fish or insects will be harmed. Aroclor degradation rate will be slow. Tough to defend against. Higher chlorination compounds will be worse [than] lower chlorine compounds. Therefore we will have to restrict uses and clean-up as much as we can, starting immediately."[25]

61. Monsanto knew furthermore that plasticizer products made with PCB would easily contaminate the environment. A March 25, 1969, memo observes, "We sold 48 M pounds of chlorinated biphenyl plasticizers in Northern California (mainly SFO Bay area) in 1968. If we assume they all found their way into the sea, I have tried to calculate a possible concentration. At 1 ppm, this would be equivalent to having all this Aroclor in an area 50 miles x 200 yards out from the shore with an average depth of 5 feet." [26]

62. Monsanto formed an Aroclor Ad Hoc Committee. The Aroclor Ad Hoc Committee held its first meeting on September 5, 1969. The committee's objectives were to continue sales and profits of Aroclors in light of the fact that PCB "may be a global

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[23] *Id.*

[24] Internal Monsanto Memorandum from W.R. Richard to E. Wheeler, dated September 9, 1969, regarding Defense of Aroclor – F. Fluids (Bates Nos. DSW 014256-014263).

[25] *Id.*

[26] Internal Monsanto memorandum from Cumming Paton to W.R. Richard, dated March 25, 1969, regarding Aroclors marked "Company Confidential" (Bates Nos. TOWOLDMON0047380-0047384, at 0047383).

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contaminant."[27] The meeting minutes acknowledge that PCB has been found in fish, oysters, shrimp, birds, along coastlines of industrialized areas such as Great Britain, Sweden, Rhine River, low countries, Lake Michigan, Pensacola Bay, and in Western wildlife. Moreover, the committee implicated the normal use of PCB-containing products as the cause of the problem: "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."[28]

63. A month later, on October 2, 1969, the Committee reported extensive environmental contamination. The U.S. Department of Interior's Fish and Wildlife Service found PCB residues in dead eagles and marine birds. Similarly, the Bureau of Commercial Fisheries reported finding PCBs in the river below Monsanto's Pensacola plant. The U.S. Food and Drug Administration had discovered PCBs in milk supplies. The Committee advised that Monsanto could not protect the environment from Aroclors as "global" contaminants but could protect the continued manufacture and sale of Aroclors:

> There is little probability that any action that can be taken will prevent the growing incrimination of specific polychlorinated biphenyls (the higher chlorinated – e.g. Aroclors 1254 and 1260) as nearly global environmental contaminants leading to contamination of human food (particularly fish), the killing of some marine species (shrimp), and the possible extinction of several species of fish eating birds.
>
> Secondly, the committee believes that there is no practical course of action that can so effectively police the uses of these products as to prevent environmental contamination. There are, however a number of actions which must be undertaken to prolong the manufacture, sale and use of these particular Aroclors as well as to protect the continued use of other members of the Aroclor series.[29]

64. Despite growing evidence of PCBs' infiltration of every level of the global ecology, Monsanto remained steadfast in its production of Aroclors and other PCBs.

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[27] MONS 030483-030486.

[28] *Id.*at 030485.

[29] Internal Monsanto Memorandum, dated October 2, 1969, Report of the Aroclor "Ad Hoc" Committee, marked Confidential (Bates Nos. MONS 036720 – 036732, at 036723, emphasis added).

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65. In a report to its Corporate Development Committee, Monsanto expressed a desire to keep profiting from PCBs despite the environmental havoc. The report suggests possible reactions to the contamination issue. It considered that doing nothing was "unacceptable from a legal, moral, and customer public relations and company policy viewpoint." But the option of going out of the Aroclor business was also considered unacceptable: "there is too much customer/market need and selfishly too much Monsanto profit to go out."[30]

66. Monsanto's desire to protect Aroclor sales rather than the environment is reflected in the Aroclor Ad Hoc Committee's stated objectives:

> 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.[31]

67. An interoffice memorandum circulated on February 16, 1970, provided talking points for discussions with customers in response to Monsanto's decision to eliminate Aroclors 1254 and 1260: "We (your customer and Monsanto) are not interested in using a product which may present a problem to our environment." Nevertheless, the memo acknowledges that Monsanto "can't afford to lose one dollar of business." To that end, it says, "We want to avoid any situation where a customer wants to return fluid. . . . We would prefer that the customer use up his current inventory and purchase [new products] when available. He will then top off with the new fluid and eventually all Aroclor 1254 and Aroclor 1260 will be out of his system. <u>We don't want to take fluid back</u>."[32]

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[30] Internal Monsanto Documents entitled "PCB Presentation to Corporate Development Committee" (Bates Nos. MONS 058730-058752 at 058737).

[31] *Id.*

[32] Internal Monsanto Memorandum from N.T. Johnson, dated February 16, 1970, entitled "Pollution Letter" (Bates Nos. MONS 100123-100124, emphasis in original).

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68. Even worse, Monsanto instructed its customers to dispose of PCB containing material in local landfills, knowing that landfills were not suitable for PCB contaminated waste. Monsanto had determined that the only effective mothed of disposing of PCBs was incineration, and it constructed an incinerator for disposal of its own PCB contaminants. Nevertheless, as Monsanto executive William Papageorge explained in his 1975 testimony before the Wisconsin Department of Natural Resources, Monsanto instructed its customers to dispose of PCB contaminated waste in landfills: "lacking that resource [a commercial incinerator], we have to reluctantly suggest, because we don't have a better answer, that they find a well operated, properly operated landfill and dispose of the material in that fashion."[33]

69. In 1970, the year after Monsanto formed the Aroclor Ad Hoc Committee, and despite Monsanto's knowledge of the global reach of PCB contamination, PCB production in the United States peaked at 85 million pounds.

70. Growing awareness of the ubiquitous nature of PCBs led the Unites States to conduct an investigation of health and environmental effects and contamination of food and other products. A federal interdepartmental task force concluded in May 1972 that PCBs were highly persistent, could bioaccumulate to relatively high levels, and could have serious adverse health effects on human health.[34]

71. After the task force issued its report, environmental sampling and studies indicated that PCBs were a "more serious and continuing environmental and health threat than had been originally realized."[35] To address these concerns, EPA undertook a study to assess PCB levels in the environment on a national basis. That study revealed widespread occurrence

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[33] *See* Testimony of William Papageorge, Public Hearing to Review and Receive Public Comment Upon Proposed Administrative Rules Relating to the Discharge of Polychlorinated Biphenyls (PCB's) Into the Waters of the State, Before the Wisconsin Department of Natural Resources (August 28-29, 1975).

[34] EPA, Review of PCB Levels in the Environment, EPA-560/7-76-001 (January 1976).

[35] *Id.* at 1.

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of PCBs in bottom sediments in several states; in fish and birds; in lakes and rivers; in the Atlantic Ocean, the Pacific Ocean, and the Gulf of Mexico; sewage treatment facilities; in a variety of foods including milk, poultry, eggs, fish, meat, and grains; and in human tissues, blood, hair, and milk.[36]

72. For years, Monsanto had been promoting the use and sale of Aroclor and other PCB compounds. In a 1960 brochure, Monsanto promotes the use of Aroclors in transformers and capacitors, utility transmission lines, home appliances, electric motors, fluorescent light ballasts, wire or cable coatings, impregnants for insulation, dielectric sealants, chemical processing vessels, food cookers, potato chip fryers, drying ovens, thermostats, furnaces, and vacuum diffusion pumps. Aroclors could also be used, the brochure advertised, as a component of automotive transmission oil; insecticides; natural waxes used in dental casting, aircraft parts, and jewelry; abrasives; specialized lubricants; industrial cutting oils; adhesives; moisture-proof coatings; printing inks; papers; mastics; sealant; caulking compounds; tack coatings; plasticizers; resin; asphalt; paints, varnishes, and lacquers; masonry coatings for swimming pools, stucco homes, and highway paints; protective and decorative coatings for steel structures, railway tank and gondola cars; wood and metal maritime equipment; and coatings for chemical plants, boats, and highway marking. [37]

73. A 1961 brochure explains that Monsanto's Aroclors are being 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. [38]

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[36] *Id., passim.*

[37] Monsanto publication "The Aroclor Compounds," hand dated May 1960, (Bates Nos. TOWOLDMON0005563-5609).

[38] Monsanto Publication "Plasticizer Patter, End Uses for Aroclor Compounds" dated February 1961 (Bates Nos. 0627503-21).

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74. Thus, by February 1961, at the latest, Monsanto knew that its Aroclors were being used in a variety of industrial, commercial, household, and consumer goods. Moreover, Monsanto affirmatively encouraged these uses by encouraging salesmen to market products for these and other applications.

75. A few years later, in 1970, Monsanto tried to distance itself from the variety of applications of Aroclors that it proudly espoused a few years before. In a press release, the company claimed: "What should be emphasized . . . is that PCB was developed over 40 years ago primarily for use as a coolant in electrical transformers and capacitors. It is also used in commercial heating and cooling systems. It is not a 'household' item."[39]

D. Monsanto Concealed the Nature of PCBs From Governmental Entities

76. While the scientific community and Monsanto knew that PCBs were toxic and becoming a global contaminant, Monsanto repeatedly misrepresented these facts, telling governmental entities the exact opposite — that the compounds were not toxic and that the company would not expect to find PCBs in the environment in a widespread manner.

77. In a March 24, 1969, letter to Los Angeles County Air Pollution Control District, Monsanto advised that the Aroclor compounds "are not particularly toxic by oral ingestion or skin absorption."[40] Addressing reports of PCBs found along the West Coast, Monsanto claimed ignorance as to their origin, explaining that "very little [Aroclor] would normally be expected either in the air or in the liquid discharges from a using industry."[41]

78. A similar letter sent to the Regional Water Quality Control Board – San Francisco Bay Region on March 27, 1969, explained that PCBs are associated with "no special

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[39] *See* Monsanto Press Release, dated July 16, 1970 (Bates Nos. MCL000647-50).

[40] Letter from Jack T. Garrett, Manager Pollution Abatement and Industrial Hygiene, Monsanto to Mr. Harry Chatfield, Los Angeles County Air Pollution Control District, dated March 24, 1969 (Bates Nos. NCR-Fox-0575881).

[41] *Id.*

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health problems."[42] The letter advises that "In view of PCB's chemical inertness, we would anticipate no problems associated with the environment from refuse dumps.[43]

79. In May, 1969, Monsanto employee Elmer Wheeler spoke with a representative of the National Air Pollution Control Administration, who promised to relay to Congress the message that Monsanto "cannot conceive how the PCBs can be getting into the environment in a widespread fashion."[44]

80. Monsanto delivered the same message to the New Jersey Department of Conservation in July, 1969, claiming first, "Based on available data, manufacturing and use experience, we do not believe the PCBs to be seriously toxic."[45] The letter then reiterates Monsanto's position regarding environmental contamination: "We are unable at this time to conceive of how the PCBs can become wide spread in the environment. It is certain that no applications to our knowledge have been made where the PCBs would be broadcast in the same fashion as the chlorinated hydrocarbon pesticides have been."[46]

E. City of Seattle and City of Spokane

81. The City of Seattle and the City of Spokane have filed federal suits against Monsanto for PCB contamination, *City of Seattle v. Monsanto Company, et al.*, Case No. 2:16-cv-00107-RSL, filed January 25, 2016, Hon. Robert S. Lasnik, and *City of Spokane v. Monsanto Company, et al.*, Case No. 2:15-cv-00201-SMJ, filed July 31, 2015, Hon. Salvador Mendoza, Jr.

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[42] Letter from Howard S. Bergen, Director, Functional Fluids, Monsanto to Mr. Fred H. Dierker, Executive Officer, State of California Resources Agency, dated March 27, 1969 (Bates Nos. DSW 280813 – 281816).

[43] *Id.*

[44] Internal Monsanto memorandum from E.P. Wheeler to W.R. Richard, dated May 26, 1969 (Bates Nos. MONS 096344-096345).

[45] Letter from Elmer F. Wheeler, Manager, Environmental Health, Monsanto to Dr. A. Bruce Pyle, New Jersey Department of Conservation and Economic Development, dated July 23, 1969 (Bates Nos. NCR-FOX-0575899-0575901).

[46] *Id.*

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82. The claims and damages in this lawsuit do not subsume or incorporate those claims and damages in *City of Seattle* or *City of Spokane* mentioned in paragraph 81.

FIRST CAUSE OF ACTION

PUBLIC NUISANCE - RCW 7.48

83. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this cause of action.

84. The State is not asserting this claim against Pharmacia for costs to investigate and remediate contamination in the Lower Duwamish. In all other respects, Pharmacia is subject to this claim.

85. Monsanto manufactured, distributed, marketed, and promoted PCBs in a manner that created or participated in creating a public nuisance that is harmful to health and obstructs the free use of public resources and state waters.

86. Monsanto intentionally manufactured, marketed, and sold PCBs with the knowledge that they were causing global environmental contamination.

87. Monsanto knew that PCBs would likely end up in Washington's public natural resources, including waterways, water bodies, sediments, fish and animal tissues.

88. Monsanto knew that PCBs would likely end up in Washington's property, including submerged lands and bedlands.

89. Monsanto's conduct and the presence of PCBs annoy, injure, and endanger the comfort, repose, health, and safety of others.

90. Monsanto's conduct and the presence of PCBs interfere with and obstruct the public's free use and comfortable enjoyment of public natural resources and state waters for commerce, navigation, fishing, recreation, and aesthetic enjoyment.

91. The presence of PCBs also interferes with the free use of public natural resources for a healthy ecological environment.

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92. Monsanto's conduct and the presence of PCBs in public resources and state waters are injurious to human, animal, and environmental health.

93. An ordinary person would be reasonably annoyed or disturbed by the presence of toxic PCBs that endanger the health of fish, animals, and humans and degrade water quality and marine habitats.

94. The seriousness of the environmental and human health risk far outweighs any social utility of Monsanto's conduct in manufacturing PCBs and concealing the dangers posed to human health and the environment.

95. The rights, interests, and inconvenience to the State and general public far outweighs the rights, interests, and inconvenience to Monsanto, which profited heavily from the manufacture of PCBs and which can no longer produce PCBs.

96. Monsanto's conduct caused and continues to cause harm to the State.

97. The State suffered and suffers damage from Monsanto's PCBs. The State incurred and incurs costs to remove PCBs that have invaded public natural resources, to prevent PCBs from injuring additional public natural resources, and to restore those public natural resources whose use has been lost. The injury to public natural resources is specially injurious to the state in its proprietary and natural resource trustee capacities.

98. The State is incurring and will continue to incur costs to investigate, monitor, analyze, and remediate PCB contamination in public natural resources.

99. Monsanto knew or, in the exercise of reasonable care, should have known that the manufacture and sale of PCBs was causing and would cause the type of contamination now found in public natural resources. Monsanto knew that PCBs would contaminate water supplies, degrade marine habitats and endanger birds and animals. In addition, Monsanto knew PCBs are associated with serious illnesses and cancers in humans and that humans may be exposed to PCBs through ingestion of fish and/or dermal contact. As a result, it was foreseeable to Monsanto that humans may be exposed to PCBs through swimming in

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contaminated waters, playing on contaminated beaches, and by eating fish and shellfish from contaminated areas. Monsanto thus knew, or should have known, that PCB contamination would seriously and unreasonably interfere with the ordinary comfort, use, and enjoyment of any contaminated water body. Monsanto had a duty to cease manufacturing, distributing, selling and promoting PCBs and failed to do so. Monsanto also had a duty to warn about the dangers of PCBs and failed to do so.

100. As a direct and proximate result of Monsanto's creation of a public nuisance, the State has suffered, and continues to suffer, monetary damages to be proven at trial.

101. Monsanto's conduct was intentional.

SECOND CAUSE OF ACTION

PRODUCTS LIABILITY - DEFECTIVE DESIGN - RCW 7.72

102. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this cause of action.

103. The State is not asserting this claim against Pharmacia for costs to investigate and remediate contamination in the Lower Duwamish. In all other respects, Pharmacia is subject to this claim.

104. Monsanto's PCBs were not reasonably safe as designed at the time the PCBs left Monsanto's control.

105. PCBs' toxicity and inability to be contained rendered them unreasonably dangerous at all times.

106. Monsanto's PCBs were unsafe as designed as demonstrated by the United State Congress banning the production and sale of PCBs pursuant to the Toxic Substances Control Act in 1979.

107. Due to their toxicity and inability to be contained, Monsanto knew its PCBs were not safe at the time the product was manufactured because it was certain that the product would become a global contaminant and cause toxic contamination of public natural resources.

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108. Monsanto knew its PCBs were unsafe to an extent beyond that which would be contemplated by an ordinary person because of the overwhelming seriousness of creating global contamination.

109. Monsanto manufactured, distributed, sold, and promoted PCBs despite such knowledge in order to maximize its profits despite the known harm.

110. Monsanto's PCBs caused and continue to cause injury to the State.

111. The State has suffered and will continue to suffer damages.

112. Monsanto's conduct was intentional.

THIRD CAUSE OF ACTION

PRODUCTS LIABILITY - FAILURE TO WARN - RCW 7.72

113. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this count.

114. The State is not asserting this claim against Pharmacia for costs to investigate and remediate contamination in the Lower Duwamish. In all other respects, Pharmacia is subject to this claim.

115. Monsanto's PCBs were not reasonably safe because they lacked adequate warnings at the time the PCBs left Monsanto's control.

116. At the time Monsanto manufactured, distributed, sold, and promoted its PCBs, Monsanto knew it was a certainty that PCBs would become a global contaminant and contaminate public natural resources, such as waterways and wildlife.

117. Despite Monsanto's knowledge, Monsanto failed to provide adequate warnings that its PCBs would become a global contaminant and contaminate public natural resources, such as waterways and wildlife.

118. Monsanto could have warned of this certainty but intentionally concealed the certainty of global contamination in order to maximize profits.

119. Monsanto learned and concealed the dangers of PCBs after it manufactured,

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distributed, promoted, and sold PCBs.

120. Without adequate warnings or instructions, Monsanto's PCBs were unsafe to an extent beyond that which would be contemplated by an ordinary person.

121. Monsanto knowingly failed to issue warnings or instructions concerning the dangers of PCBs in the manner that a reasonably prudent manufacturer would act in the same or similar circumstances.

122. Monsanto's PCBs caused and continue to cause injury to the State.

123. The State has suffered and will continue to suffer damages.

124. Monsanto's conduct was intentional.

FOURTH CAUSE OF ACTION

NEGLIGENCE

125. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restates in this count.

126. The State is not asserting this claim against Pharmacia for costs to investigate and remediate contamination in the Lower Duwamish. In all other respects, Pharmacia is subject to this claim.

127. Monsanto failed to exercise ordinary care because a reasonably careful company that learned of its product's toxicity would not manufacture that product or would warn of its toxic properties.

128. Monsanto failed to exercise ordinary care because a reasonably careful company that learned that its product could not be contained during normal production and use would not continue to manufacture that product or would warn of its dangers.

129. Monsanto failed to exercise ordinary care because a reasonably careful company would not continue to manufacture PCBs in mass quantities and to the extent that Monsanto manufactured them.

130. Monsanto was grossly negligent because it failed to exercise even slight care.

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131. Monsanto's negligence caused and continues to cause injury to the State and public natural resources.

132. The State has suffered and will continue to suffer damages.

FIFTH CAUSE OF ACTION

EQUITABLE INDEMNITY

133. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this count.

134. The State is not asserting this claim against Pharmacia for costs to investigate and remediate contamination in the Lower Duwamish. In all other respects, Pharmacia is subject to this claim.

135. The State is subject to legal obligations that required and will require the expenditure of money.

136. Monsanto is responsible for the PCB contamination that the State must address pursuant to these legal obligations.

SIXTH CAUSE OF ACTION

STATUTORY TRESPASS - RCW 4.24.630

137. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this count.

138. The State is not asserting this claim against Pharmacia for costs to investigate and remediate contamination in the Lower Duwamish. In all other respects, Pharmacia is subject to this claim.

139. Monsanto's conduct wrongfully caused injury to the public natural resources of the state.

140. Monsanto acted intentionally and unreasonably while knowing, or having reason to know, that the State did not give Monsanto authorization to act in a manner that would cause injury to public natural resources of the state.

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141. Due to Monsanto's wrongful and intentional conduct, which caused injury to the public natural resources of the state, the State has suffered and will continue to suffer damages in the future.

142. Monsanto's wrongful and intentional conduct was and is the direct factual and legal cause of the injury to Monsanto.

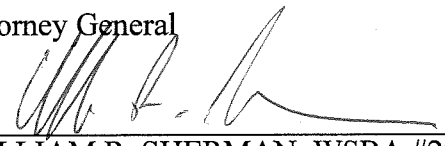
PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

1. Compensatory damages according to proof;
2. Damages for injury to natural resources, including the economic impact to the State and residents;
3. Award of the present and future costs to clean up;
4. Litigation costs and attorney's fees as provided by law;
5. Pre-judgment and post-judgment interest as provided by law;
6. Any other and further relief as the Court deems just and proper.

DATED this 8th day of December 2016.

ROBERT W. FERGUSON
Attorney General



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