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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss

SUPERIOR COURT DEPT.
C.A. # BRCV2008-01429A

JOHN DaROSA, JOHN DAY,
DIANE COSMO, LUIS BARBOSA,
And ERMELINDA BARBOSA

Plaintiffs/Defendants in counterclaim)

v

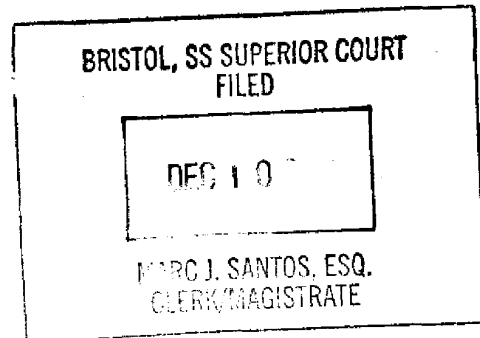
CITY OF NEW BEDFORD,

Defendant/Plaintiff in counterclaim
and Third Party Plaintiff

v

MONSANTO COMPANY, PHARMACIA)
CORPORATION, SOLUTIA, INC.,)
CORNELL-DUBLILIER ELECTRONICS,)
INC., DELLA M. BUTLER, LILLIAN J.)
BARNES, MARION J. BARNES,)
ADELINO DESOUSA,)
MARIA DESOUSA, HARRISON W.)
JOSEPH, JOSEPH OLIVER, VIRGINIA)
OLIVER, JOSEPH OLIVER, JENNY)
OLIVER, JOSEPH OLIVER, JR., JENNY)
OLIVER, JASON E. LEVINE, MARY N.)
WINDERLICK, WALTER A. BEAN,)
NATALIE BEAN, SOMKHOUAN)
PATSAKHAM, CHANHOUE)
PATSAKHAM, LORETTA AUGER,)
MANUEL FERRO, JOHN T. DAROSA,)
ILIDIA DAROSA, MARIA T. DAROSA,)
and JOHN DOES 1-20,)

Third Party Defendants)



DEFENDANT/PLAINTIFF IN COUNTERCLAIM/THIRD PARTY PLAINTIFF
CITY OF NEW BEDFORD'S THIRD PARTY COMPLAINT

PARTIES

1. The Plaintiffs John DaRosa, John Day, Diane Cosmo, Luis Barbosa and Ermelinda Barbosa, all natural persons who are the residents of the city of New Bedford, Bristol County, Commonwealth of Massachusetts have filed with the Court a First Amended Complaint and Jury Claim containing allegations of private nuisance (Count I), public nuisance (Count II), violations of M.G.L. c. 21E, §5 (Count III) and breach of contract (Count IV) relative to the City of New Bedford's alleged operation of an ash dump in the vicinity of McCoy Field and Keith Middle School in New Bedford at a site now known as DEP Release Tracking Number 4-15685. The Plaintiffs have alleged that as a result of the operation of this site their residential properties have become contaminated with hazardous materials including arsenic, lead, polychlorinated biphenyls (PCBs) and other hazardous substances.
2. The Plaintiffs allege that as a result of the alleged contamination they have been damaged.
3. The Defendant City of New Bedford is a Massachusetts municipal corporation with a principal place of business at 133 William Street, New Bedford, Bristol County, Commonwealth of Massachusetts.
4. The City of New Bedford has this day filed counterclaims against the Plaintiffs alleging that all of them are "owners and/or operators" in accordance with M.G.L. c. 21E, §4A and 5. The City of New Bedford has further alleged in its counterclaim that Plaintiffs Luis Barbosa and Ermelinda Barbosa are also

operators, transporters, disposers, persons who contracted for the transportation and disposal of hazardous materials in violation of the provisions of M.G.L. c. 21E and/or that they caused or were otherwise legally responsible for releases of PCBs, lead, zinc, oil or other hazardous material.

5. Third Party Defendant Monsanto Company (hereinafter "Monsanto") is a foreign corporation organized under the laws of the State of Delaware with a principal office at 800 North Lindberg Boulevard, St. Louis, MO. Monsanto Company's registered agent in Massachusetts is Corporation Service Company, 84 State Street, Boston, MA.
6. Third Party Defendant Pharmacia Corporation (hereinafter "Pharmacia") is a foreign corporation organized under the laws of the State of Delaware and having a principal office at 235 East 42nd Street, New York, NY. The Massachusetts registered agent for Pharmacia Corporation is C T Corporation System, 155 Federal Street, Suite 700, Boston, MA.
7. Third Party Defendant Solutia, Inc., (hereinafter "Solutia") is a foreign corporation organized under the laws of the State of Delaware and having a principal office at 575 Maryville Centre Drive, St. Louis, MO. Its Massachusetts registered agent is C T Corporation System, 155 Federal Street, Suite 700, Boston, MA.
8. Third Party Defendant Cornell-Dubilier Electronics, Inc., (hereinafter "CDE") is a foreign corporation organized under the laws of the State of Delaware having a principal office at 1700 Route 23 North, Wayne, NJ. Its Massachusetts registered agent is C T Corporation System, 155 Federal Street, Suite 700, Boston, MA.

9. Third Party Defendant Della M. Butler was an individual who acquired title to 110 Greenwood Street on October 9, 1942 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 860 Page 375. Defendant Butler's current whereabouts are unknown.
10. Third Party Defendant Lillian J. Barnes acquired title to 110 Greenwood Street on October 9, 1942 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 860 Page 378. Third Party Defendant Barnes' current whereabouts are unknown.
11. Third Party Defendant Marion J. Barnes acquired title to 110 Greenwood Street on September 23, 1947 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 936 Page 390 and through Bristol County Probate Docket No. 142369. Third Party Defendant Barnes' current whereabouts are unknown.
12. Third Party Defendants Adelino and Maria DeSousa acquired title to the property at 110 Greenwood Street on November 8, 1985 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 1941 Page 690. Adelino DeSousa currently resides at 602 Park York Lane, Cary, NC. The whereabouts of Maria DeSousa are currently unknown.
13. Third Party Defendant Harrison W. Joseph acquired title to the property at 119 Greenwood Street on December 28, 1943 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 876 Page 342. Defendant Joseph's current whereabouts is unknown.

14. Third Party Defendants Joseph and Virginia Oliver acquired title to the property at 119 Greenwood Street on July 13, 1948 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 950 Page 60. The whereabouts of Joseph and Virginia Oliver are currently unknown.
15. Third Party Defendants Joseph and Jenny Oliver acquired title to the property at 119 Greenwood Street on October 14, 1965 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 1499 Page 441. The present whereabouts of Joseph and Jenny Oliver are unknown.
16. Third Party Defendants Joseph Oliver, Jr. and Jenny Oliver obtained title to the property at 119 Greenwood Street on February 16, 1979 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 1779 Page 19. Joseph Oliver, Jr. currently resides at 966B Case Road, Labelle, FL. The current whereabouts of Jenny Oliver are unknown.
17. Third Party Defendant Jason E. Levine obtained title to the property at 119 Greenwood Street on February 20, 1979 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 1779 Page 68. The current whereabouts of Jason E. Levine are unknown.
18. Third Party Defendant Mary N. Winderlick obtained title to the property at 119 Greenwood Street on February 20, 1979 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 1779 Page 70. The current whereabouts of Mary N. Winderlick are unknown.
19. Third Party Defendants Walter A. Bean and Natalie Bean obtained title to the property at 119 Greenwood Street on January 20, 1982 in accordance with a deed

recorded in the Bristol County (S.D.) Registry of Deeds at Book 1835 Page 596. Walter A. Bean currently resides at 23 Mount Fair Circle, Swansea, MA. The current whereabouts of Natalie Bean are unknown.

20. Third Party Defendants Somkhoun Patsakham and Chanhoun Patsakham obtained title to the property at 119 Greenwood Street on May 15, 1984 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 1891 Page 1194. Somkhoun (sic) Patsakham currently resides at 840 Shiloh Road, Statesville, NC. The current whereabouts of Chanhoun Patsakham are currently unknown.
21. Third Party Defendant Loretta Auger obtained title to 128 Ruggles Street on October 15, 1941 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 847 Page 137. The current whereabouts of Loretta Auger are unknown.
22. Third Party Defendant Manuel Ferro obtained title to 128 Ruggles on September 11, 1942 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 860 Page 150. The current whereabouts of Manuel Ferro are unknown.
23. Third Party Defendants John T. DaRosa and Ilidia DaRosa obtained title to 128 Ruggles Street on December 18, 1964 in accordance with a deed recorded in the Bristol County (S.D.) Registry of Deeds at Book 1469 Page 280. The current whereabouts of John T. DaRosa and Ilidia DaRosa are currently unknown.
24. Third Party Defendant John S. DaRosa and Maria T. DaRosa obtained title to 128 Ruggles Street on February 12, 1987 in accordance with a deed recorded in the

Bristol County (S.D.) Registry of Deeds at Book 2010 Page 425. Defendant John S. DaRosa resides at 128 Ruggles Street, New Bedford, Bristol County, Commonwealth of Massachusetts and is also a Plaintiff in this action. The whereabouts of Maria T. DaRosa are currently unknown.

25. Upon information and belief, Third Party Defendant John Does 1-10 were distributors, marketers, suppliers, designers or sellers of products containing arsenic, lead, zinc, polychlorinated biphenyls (PCBs) and other oil or hazardous materials as defined by the Massachusetts DEP, M.G.L. c. 21E and regulations promulgated pursuant to 21E. Although the identities of the John Doe Third Party Defendants 1-10 are currently unknown, it is expected that their names will be ascertained during discovery, at which time the Third Party Plaintiff City of New Bedford anticipates it will obtain leave of this Court to add those individuals' actual names to the Third Party Complaint as Third Party Defendants.
26. Upon information and belief, Third Party Defendant John Does 11-20 were
 - 1) operators of a site from or at which there has been a release or threat of release of hazardous material, 2) persons or entities who at the time of storage or disposal of any hazardous material owned or operated any site at or upon which such hazardous material was stored or disposed of and from which there has been a release or threat of release of hazardous material, 3) a person or entity who by contract, agreement or otherwise arranged for the transport, disposal, storage or treatment of hazardous material to or in a site from or at which there has been a release or threat of release of hazardous material; 4) a person or entity who, directly or indirectly transported hazardous material to a site from or at which

there has been a release or threat of release of hazardous material; and/or 5) a person or entity who otherwise caused or is legally responsible for a release or threat of release of hazardous material from a site. Although their identities are unknown, it is expected that their names will be ascertained during discovery at which time the Third Party Plaintiff City of New Bedford anticipates it will obtain leave of this Court to add their actual names to this Third Party Complaint as Third Party Defendants.

VENUE

27. Defendants Monsanto, Pharmacia and Solutia manufactured products (PCBs), lead, zinc, oil or other hazardous materials which were manufactured, sold, distributed, stored or disposed of in New Bedford, Bristol County, Commonwealth of Massachusetts.
28. Defendant CDE manufactured products (capacitors) which contained lead, zinc, PCBs, oil or other hazardous materials which were sold, manufactured, distributed, stored or disposed of in New Bedford, Bristol County, Commonwealth of Massachusetts.
29. The "owners/operators" Defendants (Count VIII) owned, resided in or operated from real estate located in New Bedford, Bristol County, Commonwealth of Massachusetts.
30. The John Doe Defendants 1 through 20 engaged in or did business in New Bedford, Bristol County, Commonwealth of Massachusetts.

31. The DEP Release Tracking Number 4-15685 site sometimes referred to as the Parker Street Waste Site is located in New Bedford, Bristol County, Commonwealth of Massachusetts.

FACTS COMMON TO ALL COUNTS

32. Monsanto Chemical Company and its successor Monsanto Company (collectively referred to as "Old Monsanto") from 1935 to 1971 was the exclusive manufacturer of Polychlorinated Biphenyls (hereinafter "PCBs") in the United States.
33. PCBs are either oily liquids or solids that are colorless to light yellow in appearance and are often known in the United States by the trade name Aroclor.
34. There are no known natural sources of PCBs in the environment and once in the environment PCBs do not readily break down and therefore may remain for very long periods of time.
35. The United States Environmental Protection Agency has determined that PCBs are probably carcinogenic to humans and the manufacture of PCBs was banned in the United States in August of 1977 due to its toxic and hazardous characteristics.
36. As of 1955 Old Monsanto was aware that Aroclors (PCBs) are toxic.
37. A 1975 report by the EPA sent to Old Monsanto confirmed that PCBs "pose a threat to human health in the environment."
38. Old Monsanto knew PCBs were hazardous but manufactured and profited from them for more than forty years with conscious disregard for the rights of others.

39. Old Monsanto spun off certain chemical businesses in 1997 including those which previously manufactured PCBs into Solutia, Inc., an independent publicly owned company.
40. Solutia agreed to indemnify Old Monsanto for claims, expenses and/or liability related to PCB liability.
41. Old Monsanto merged with Pharmacia and UpJohn, Inc., changing the name of the corporation to Pharmacia Corporation.
42. Thereafter, in 2000, Pharmacia Corporation created a wholly owned subsidiary called Monsanto Company (hereinafter referred to as "New Monsanto").
43. New Monsanto agreed to indemnify Pharmacia Corporation for claims, expenses and/or liability related to Old Monsanto's chemical business including PCBs to the extent such liability was not also covered by the indemnity agreement with Solutia which also agreed to indemnify new Monsanto for claims, expenses and/or liability related to PCBs.
44. The Third Party Defendant Cornell-Dubilier Electronics, Inc. (hereinafter "CDE") for years manufactured and distributed capacitors which contained, among other oil or hazardous materials, lead, zinc and PCBs.
45. Elevated levels of lead, zinc, PCBs and other oils or hazardous material have been found in the soil in the area of the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site.
46. Capacitors containing identification marks indicating they were manufactured by Third Party Defendant CDE have been unearthed at various locations in the area

of the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site.

COUNT I – Negligence
(v. Third Party Defendants Monsanto Company, Pharmacia Corporation and Solutia, Inc.)

47. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 46 of its Third Party Complaint.
48. Defendants owe a duty of reasonable care to the Third Party Plaintiff to design, manufacture, market, test and perform quality assurance evaluations sell or distribute PCBs in a safe condition.
49. Defendants failed to exercise reasonable care in the design, sale, testing, quality assurance, marketing, packaging, warnings, advertising, promotion, monitoring and warning of adverse affects and/or distribution of PCBs thereby breaching their duty to Third Party Plaintiff.
50. As a result of the negligence of the Defendants the Third Party Plaintiff was and will continue to be caused damages and economic losses for purposes of assessment work, acquisition costs, consulting fees, cleanup costs, remediation costs, expert and attorneys fees in an amount to be determined at trial.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendants Monsanto Company, Pharmacia Corporation and Solutia, Inc., on Count I of Third Party Plaintiff's Third Party Complaint.

COUNT II – Negligence
(v. Cornell-Dubilier Electronics, Inc.)

51. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 50 of its Third Party Complaint.
52. The Defendant CDE owed a duty of reasonable care to the Plaintiff to design, manufacture, market, test and perform quality assurance evaluations, sell or distribute capacitors containing lead, zinc, PCBs or other oil or hazardous materials in a safe condition.
53. Defendant CDE breached its duty by failing to exercise reasonable care in the design, sale, testing, quality assurance, marketing, packaging, warnings, advertising, promotion, monitoring and warning of adverse affects and/or distribution of capacitors containing lead, zinc, PCBs and other oil or hazardous materials.
54. As a result of the negligence of the Defendant CDE the Third Party Plaintiff was and will continue to incur damages and economic loss relative to assessment work, site acquisition costs for privately owned property, consulting fees, clean-up costs, expert and attorneys fees and remediation costs in the future.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendant Cornell-Dubilier Electronics, Inc., on Count II of its Third Party Complaint.

COUNT III – Products, Liability/Manufacturing Defect
(v. Monsanto Company, Pharmacia Corporation and Solutia, Inc.)

55. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 54 of its Third Party Complaint.

56. Upon information and belief, Cornell-Dubilier, Inc. purchased and used PCBs manufactured by Defendants Monsanto, Pharmacia and Solutia.
57. The Defendant CDE utilized PCBs in its capacitor manufacturing process.
58. As a result of the contaminate and/or product defect PCBs escaped from CDE's capacitors and contaminated soils at the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site in New Bedford. The Defendants' PCBs were in a defective condition and unreasonably dangerous to third parties when they left the Defendants' control.
59. PCBs at the time they left Defendants' control contained a manufacturing defect because they were designed in a manner that allowed the PCB molecules to escape thereby contaminating soils at the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site.
60. As a result thereof, the Third Party Plaintiff City of New Bedford has and will incur damages and economic loss as a result of conducting assessment work, acquisition costs relative to private property, consulting fees, clean-up costs, expert and attorney fees and future remediation costs.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendants Monsanto Company, Pharmacia Corporation and Solutia, Inc., on Count III of Third Party Plaintiff's Third Party Complaint.

COUNT IV – Products Liability/Manufacturing Defect
(v. Cornell-Dubilier Electronics, Inc.)

61. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 60 of its Third Party Complaint.

62. Upon information and belief, Third Party Defendant CDE purchased and used PCBs manufactured by Defendants Monsanto, Pharmacia and Solutia and other hazardous materials in the manufacturing process for its capacitors.
63. Defendants' capacitor product was a defective condition and unreasonably dangerous to third parties when it left CDE's control as a result of the contaminate and/or product defect PCBs escaped from Defendant's capacitors thereby contaminating the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site.
64. At all times CDE's capacitors containing PCBs and other hazardous materials were used in the manner intended.
65. CDE's capacitors containing PCBs, at the time they left Defendant's control constituted a manufacturing defect because they were designed in a manner that allowed the PCB materials to escape thereby contaminating soils at the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site.
66. As a result of the foregoing the Third Party Plaintiff was damaged, incurred economic loss and cost for assessment work, acquisition costs relative to privately owned property, consultant fees, clean-up costs, expert and attorneys fees and future remediation costs.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendant Cornell-Dubilier Electronics, Inc., on Count IV of its Third Party Complaint.

COUNT V – Products Liability/Design Defect
(v. Monsanto Company, Pharmacia Corporation, Solutia, Inc., and
Cornell-Dubilier Electronics, Inc.)

67. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 66 of its Third Party Complaint.
68. At all times material hereto PCBs and capacitors containing PCBs manufactured and/or supplied by Defendants Monsanto, Pharmacia, Solutia and/or CDE were placed into the stream of commerce by the Defendants in a defective, contaminated and unreasonably dangerous condition in that the known and foreseeable use associated with the product exceeded any benefits associated with the design or formulation.
69. In the alternative, PCBs and capacitors containing PCBs manufactured and/or supplied by the Defendants were defective in design and formulation so that when placed in the stream of commerce they were unreasonably dangerous and/or capable of becoming unreasonably dangerous.
70. PCBs and capacitors containing PCBs manufactured by Defendants were defective because Defendants knew or should have known that the product created a risk upon third parties in the way in which the product was intended to be used and in a manner which was reasonably foreseeable by Defendants.
71. PCBs and capacitors containing PCBs were at the time they left Defendants' control constituted a defectively designed product because they were designed in a manner that allowed PCB molecules to escape, thereby contaminating soils.
72. At all times relevant hereto there was a feasible and safer alternative design for Defendants' product. Monsanto could have manufactured PCBs so as to

eliminate the tendencies of PCBs to escape and CDE could have designed its capacitors without including PCBs or by manufacturing its capacitors in such a fashion which would reduce or eliminate the possibility of the escape of PCBs into the environment.

73. PCBs and capacitors were at the time they left the Defendants' control defectively designed products and unreasonably dangerous for use resulting in injury to third parties as herein alleged. The defective and unreasonably dangerous condition of the PCBs and capacitors containing PCBs was the proximate cause of damages and injuries sustained by or to be sustained by Third Party Plaintiff.

74. As a result of the foregoing Third Party Plaintiff was and will continue to incur damages and economic loss relative to assessment work, acquisition costs relative to privately owned property, consulting fees, clean-up costs, expert and attorneys fees and future remediation costs.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendants Monsanto Company, Pharmacia Corporation, Solutia, Inc., and Cornell-Dubilier Electronics, Inc., on Count V of Third Party Plaintiff's Third Party Complaint.

COUNT VI – Products Liability/Failure to Warn
(v. Monsanto Company, Pharmacia Corporation, Solutia, Inc., and
Cornell-Dubilier Electronics, Inc.)

75. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 74 of its Third Party Complaint.

76. Defendants had a duty to warn Third Party Plaintiff and the general public of risks and/or defects about which Defendants knew or should have known with respect to PCBs in general and specifically PCBs in capacitors.
77. The Defendants failed to adequately warn Plaintiff and the general public of the risk of PCBs and of capacitors containing PCBs which were disposed of at the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site.
78. The Defendants also failed to warn of dangers inherent with the use of PCBs and capacitors containing PCBs due to its defective design and/or defective manufacturing and the Defendants' misrepresentations and inadequate disclosures of fact to Third Party Plaintiff and the general public rendered the product unreasonably dangerous for its normal and intended uses.
79. The PCBs and PCB contaminated capacitors manufactured and/or supplied by Defendants were unreasonably dangerous and defective because the product was not accompanied by sufficient warnings to Third Party Plaintiff and the general public regarding the product's toxicity.
80. Once the Defendants knew or should have known of the risk of injury from PCBs and capacitors containing PCBs the Defendants failed to provide adequate warnings to users or consumers and as a direct result thereof the capacitors containing PCBs manufactured and/or supplied by Defendants were defective due to inadequate post marketing warnings and/or instructions.
81. As a result of the foregoing the Third Party Plaintiff was damaged and will be caused to incur further damages and economic loss resulting from assessment

work, acquisition costs relative to privately owned property, consulting fees, clean-up costs, expert and attorneys fees and future remedial costs.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendants Monsanto Company, Pharmacia Corporation, Solutia, Inc., and Cornell-Dubilier Electronics, Inc., on Count VI of Third Party Plaintiff's Third Party Complaint.

COUNT VII – Violations of M.G.L. c. 21E, §§4, 4A, 5 and 15
(v. Monsanto Company, Pharmacia Corporation, Solutia, Inc., and
Cornell-Dubilier Electronics, Inc.)

82. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 81 of its Third Party Complaint.
83. Upon information and belief in the 1970s the United States Federal Government determined there was a reasonable basis to conclude that the manufacturing, processing, distribution and commercial use of disposable PCBs or a combination of such activities presents an unreasonable risk of injury to health and the environment.
84. Lead, zinc, PCBs and other oil or hazardous materials are regulated in Massachusetts by M.G.L. Chapter 21E and its regulations known as the Massachusetts Contingency Plan (310 CMR 40.000 et seq.)
85. PCBs, lead, zinc and other oil or hazardous materials were present in and around the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site.
86. Capacitors manufactured and/or distributed by Defendant CDE have been located in the soils within and in the vicinity of the site known as DEP Release Tracking

Number 4-15685 and sometimes referred to as the Parker Street Waste Site. The Defendants Monsanto, Pharmacia and Solutia are generators and/or manufacturers of PCBs, a hazardous material regulated pursuant to M.G.L. c. 21E.

87. Defendant CDE as a manufacturer and distributor of capacitors containing PCBs and other hazardous materials constitutes a person or entity who stored, disposed of, contracted with, transported or arranged for the transport, disposal, storage or treatment of hazardous materials at the site known as DEP Release Tracking Number 4-15685 and sometimes referred to as the Parker Street Waste Site where there is or has been a release of or threat of release of hazardous materials and is therefore liable for reimbursement of all necessary and appropriate current and future related action costs incurred including without limitation all costs of remediation, private property acquisition costs, personal injuries, property damage, other economic damages and related consultant costs, expert and attorney's fees.

88. The Third Party Plaintiff City of New Bedford has incurred damages and economic loss as a result of assessment work, acquisition costs relative to privately owned property, consulting fees, clean-up costs, expert and attorneys fees and future remediation costs relative to the acts of the Defendants.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendants Monsanto Company, Pharmacia Corporation, Solutia, Inc., and Cornell-Dubilier Electronics, Inc., on Count VII of Third Party Plaintiff's Third Party Complaint.

COUNT VIII – 21E Liability M.G.L. c. 21E, §§4, 4A, 5 and 15
“Owner and/or Operator” Defendants

89. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 88 of its Third Party Complaint.
90. The Defendants Della M. Butler, Lillian J. Barnes, Marion J. Barnes, Adelino DeSousa, Maria DeSousa, Harrison W. Joseph, Joseph Oliver, Virginia Oliver, Joseph Oliver, Jenny Oliver, Joseph Oliver, Jr., Jenny Oliver, Jason E. Levine, Mary N. Winderlick, Walter A. Bean, Natalie Bean, Somkhoun Patsakham, Chanhoun Patsakham, Loretta Auger, Manuel Ferro, John T. DaRosa, Ilidia DaRosa, John S. DaRosa and Maria T. DaRosa are or were owners in the chain of title for properties located at 110 Greenwood Street, 119 Greenwood Street and 128 Ruggles Street, New Bedford, Bristol County, Commonwealth of Massachusetts.
91. The real estate located at 110 Greenwood Street, 119 Greenwood Street and 128 Ruggles Street contain elevated levels of PCBs and other hazardous materials in accordance with soil samples taken of those three properties.
92. Pursuant to M.G.L. c. 21 E, § 5 as owners and/or operators of a site from or at which there is or has been a release or threat of release of hazardous material the “owner defendants” shall be liable to the Third Party Plaintiff for its damages sustained or to be sustained for reimbursement of all necessary and appropriate current and future related action costs incurred including without limitation all costs of remediation, private property acquisition costs, personal injuries, property damage, other economic damages and related consultant costs, expert and attorney’s fees.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendants Della M. Butler, Lillian J. Barnes, Marion J. Barnes, Adelino DeSousa, Maria DeSousa, Harrison W. Joseph, Joseph Oliver, Virginia Oliver, Joseph Oliver, Jenny Oliver, Joseph Oliver, Jr., Jenny Oliver, Jason E. Levine, Mary N. Winderlick, Walter A. Bean, Natalie Bean, Somkhouan Patsakham, Chanhoun Patsakham, Loretta Auger, Manuel Ferro, John T. DaRosa, Ilidia DaRosa, John S. DaRosa and Maria T. DaRosa on Count VIII of Third Party Plaintiff's Third Party Complaint.

COUNT IX – 21E Liability §§4, 4A, 5 and 15
(as to John Doe Defendants 1-10)

93. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 92 of its Third Party Complaint.

94. Upon information and belief, John Doe Defendants 1 through 10 were manufacturers, generators, distributors, marketers, suppliers, designers or sellers of products containing PCBs and other hazardous materials as defined by the Massachusetts Department of Environmental Protection, M.G.L. c. 21E and the regulations promulgated pursuant to 21E. Pursuant to M.G.L. c. 21E, §5 they are liable to the City of New Bedford for reimbursement of all necessary and appropriate current and future related action costs incurred including without limitation all costs of remediation, private property acquisition costs, personal injuries, property damage, other economic damages and related consultant costs, expert and attorney's fees.

95. As such, John Doe Defendants 1 through 10 are liable to the Third Party Plaintiff City of New Bedford for damages and economic loss including assessment work,

acquisition costs relative to privately owned property, consultant fees, clean-up costs, expert and attorneys fees and future remediation costs.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendants John Doe 1-10 on Count IX of Third Party Plaintiff's Third Party Complaint.

COUNT X – 21E Liability §§4, 4A, 5 and 15
(as to John Doe Defendants 11-20)

96. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 95 of its Third Party Complaint.

97. John Does Defendants 11 through 20 were 1) owners or operators of a site from or at which there is or has been a release or threat of release of hazardous material; 2) a person or entity who at the time of storage or disposal of hazardous material owned or operated any site at or upon which such hazardous material was stored or disposed of and from which there is or has been a release or threat of release of hazardous material; 3) a person or entity who by contract, agreement or otherwise directly or indirectly arranged for the transport, disposal, storage or treatment of hazardous material to or in a site from or at which there is or has been a release or threat of release of hazardous material; 4) a person who directly or indirectly transported hazardous material to transport, disposal, storage sites from or at which there is or has been a threat or release of hazardous material; and/or 5) a person or entity who otherwise caused or is legally responsible for the release or threat of release of hazardous material from a site.

98. As such Defendants John Doe 11 through 20 are liable to the Third Party Plaintiff City of New Bedford pursuant to M.G.L. c. 21E, §5 for reimbursement of all necessary and appropriate current and future related action costs incurred including without limitation all costs of remediation, private property acquisition costs, personal injuries, property damage, other economic damages and related consultant costs, expert and attorney's fees.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Defendants John Doe 11-20 on Count X of Third Party Plaintiff's Third Party Complaint.

COUNT XI – 93A Claims
(as to Monsanto, Pharmacia, Solutia, CDE, John Does 1-10 and John Does 11-20)

99. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 98 of its Third Party Complaint.
100. Defendants Monsanto Company, Pharmacia Corporation, Solutia, Inc., were either in the business of manufacturing PCBs which were distributed, sold or disposed of within the Commonwealth of Massachusetts or were guarantors for the PCB related liabilities of Co-Defendants Monsanto Company, Pharmacia Corporation and Solutia, Inc.
101. Defendant Cornell-Dubilier Electronics, Inc., was in the business of manufacturing, selling and distributing capacitors containing PCBs and other hazardous materials which capacitors were manufactured, distributed, sold, stored or disposed of in the Commonwealth of Massachusetts.
102. The Defendant John Does 1 through 10 were manufacturers, generators, distributors, marketers, suppliers, designers or sellers of products containing

PCBs and other hazardous materials as defined by the Massachusetts Department of Environmental Protection, by Massachusetts General Laws Chapter 21E and the regulations promulgated pursuant to Chapter 21E.

103. The Defendant John Does 11 through 20 were a) owners or operators of a site from or at which there is or has been a release or threat of release of hazardous material; b) a person or entity who at the time of storage or disposal of hazardous material owned or operated any site at or upon which such hazardous material was stored or disposed of and from which there is or has been a release or threat of release of hazardous material; c) a person or entity who by contract, agreement or otherwise directly or indirectly arranged for the transport, disposal, storage or treatment of hazardous material to or in a site from at or which there is or has been a release or threat of release of hazardous material; d) a person or entity who directly or indirectly transported hazardous material to transport, disposal or storage sites from or at which there is or has been a threat or release of hazardous material; and/or e) a person or entity who otherwise caused or is legally responsible for the release or threat of release of any hazardous material from or at a site in the Commonwealth of Massachusetts.
104. Defendants were negligent as alleged in this Third Party Complaint.
105. Defendants breached warranties of merchantability (M.G.L. c. 106 2-314) as alleged in this Third Party Complaint.
106. The Defendants breached warranties of fitness for a particular purpose (M.G.L. c. 106 2-315) as alleged in this Third Party Complaint.
107. Defendants breached their duty to warn as alleged in this Third Party Complaint.

108. Defendants' actions and/or breaches as alleged in paragraphs 100 through 103 of this Third Party Complaint constitute violations of regulations promulgated by the Massachusetts Attorney General including but not limited to those codified at 940 CMR 3.0 et seq.
109. Violations of the Attorney General's Regulations constitute unfair and deceptive practices in the Commonwealth of Massachusetts in violation of M.G.L. c. 93A, §11.
110. The manufacture, generation, marketing, designing, sale, distribution and improper storage or disposal of PCBs, lead, zinc, oil and other hazardous materials within the Commonwealth of Massachusetts constitute violations of M.G.L. c. 93A, §11.
111. The ownership or operation of or at a site from which there has been a release or threat of release of lead, zinc, oil or other hazardous material; the storage or disposal of hazardous material owned or operated at any site at or upon which hazardous material was stored or disposed of or from which there has been a release or threat of release of hazardous material; the contract, agreement or arrangement for transport, disposal, storage or treatment of hazardous material to or in a site from or at which there has been a release or threat of release of hazardous material; the direct or indirect transportation of hazardous material to transport, disposal, or storage sites from or at which there is or has been a threat of release of hazardous material; or causing or being legally responsible for the release or threat of release of hazardous materials from a site within the

Commonwealth of Massachusetts constitutes a violation of the Code of Massachusetts Regulations.

112. The ownership or operation of or at a site from which there has been a release or threat of release of hazardous material; the storage or disposal of hazardous material owned or operated at any site at or upon which hazardous material was stored or disposed of or from which there has been a release or threat of release of hazardous material; the contract, agreement or arrangement for transport, disposal, storage or treatment of hazardous material to or in a site from or at which there has been a release or threat of release of hazardous material; the direct or indirect transportation of hazardous material to transport, disposal or storage sites from or at which there is or has been a threat of release of hazardous material; or causing or being legally responsible for the release or threat of release of hazardous materials from a site within the Commonwealth of Massachusetts constitutes a violation of M.G.L. c. 93A, §11.

113. As a result of the actions, inactions, negligence and/or breach of warranty of the Defendants, which were violations of M.G.L. c. 21E and violations of the Code of Massachusetts Regulations as alleged in Count XI of this Third Party Complaint the Third Party Plaintiff City of New Bedford has been damaged.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against the Third Party Defendants for multiple damages as set forth in Massachusetts General Laws Chapter 93A plus attorneys fees and costs.

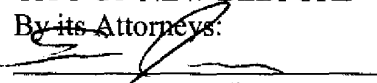
COUNT XII – Attorney and Expert Fees
(all Defendants)

114. Third Party Plaintiff City of New Bedford incorporates by reference as if set forth hereto in their entirety paragraphs 1 through 113 of its Third Party Complaint.
115. As a result of the activities of all of the Third Party Defendants, Third Party Plaintiff City of New Bedford has incurred and will continue to incur expert fees and attorneys fees relative to assessment work, acquisition costs relative to privately owned property, consulting fees, clean-up costs and future remedial costs.
116. In accordance with the provisions of M.G.L. c. 21E, §4A and §15 and M.G.L. Chapter 93A, the Third Party Plaintiff City of New Bedford is entitled to recoup from all Third Party Defendants the Third Party Plaintiff City of New Bedford's reasonably incurred or to be incurred expert and attorneys fees.

WHEREFORE, the Third Party Plaintiff respectfully requests that judgment be entered for the Third Party Plaintiff and against all of the Third Party Defendants on Count XII of Third Party Plaintiff's Third Party Complaint.

THIRD PARTY DEFENDANT CITY OF NEW BEDFORD DEMANDS TRIAL BY JURY ON ALL COUNTS SO TRIABLE OF ITS THIRD PARTY COMPLAINT.

Respectfully submitted,
CITY OF NEW BEDFORD
By its Attorneys:


Eric Jaikes BBO # 543709B
Assistant City Solicitor
Irene B. Schall BBO # 444740
City Solicitor
133 William Street, Rm. 203
New Bedford, MA 02740
(508) 979-1460

DATED: December 10, 2009

CIVIL ACTION COVER SHEET	TRIAL COURT OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT		DOCKET NO. <u>BRCV2008-01429A</u>
	COUNTY	<u>BRISTOL</u>	
Third Party and Counterclaim OF		Counterclaim	
PLAINTIFF(S) City of New Bedford		DEFENDANT(S) John DaRosa, John Day, Diane Cosmo, Luis Barbosa and Ermelinda Barbosa	

Type Plaintiff's Attorney name, Address, City/State/Zip Phone Number and BBO# Type Defendant's Attorney Name, Address, City/State/Zip Phone Number (If Known)

Eric Jaikes, Asst. City Solicitor BBO# 543709B Irene B. Schall, City Solicitor BBO # 444740 City of New Bedford 133 William Street, Room 203 New Bedford, MA 02740 Tel. (508) 979-1460	Carlín J. Phillips BBO# 561916 Andrew J. Garcia BBO# 559084 Phillips & Garcia, P.C. 13 Ventura Drive N. Dartmouth, MA 02747 Tel. (508) 998-0800 ext. 112
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TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)			
CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
C99	Claims pursuant to M.G.L. c. 21E, 93A Negligence and Products Liability	Track A	☒ Yes ☐ No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS (Attach additional sheets as necessary)	
A. Documented medical expenses to date: 1. Total hospital expenses 2. Total doctor expenses 3. Total chiropractic expenses 4. Total physical therapy expenses 5. Total other expenses (describe)	\$ _____ \$ _____ \$ _____ \$ _____ \$ _____ Subtotal \$ _____
B. Documented lost wages and compensation to date	\$ _____
C. Documented property damages to date	\$ _____
D. Reasonably anticipated future medical expenses	\$ _____
E. Reasonably anticipated lost wages and compensation to date	\$ _____
F. Other documented items of damages (describe)	\$ _____
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)	
Claims are in excess of \$5 million for site assessment, clean-up costs, expert and consulting fees, purchase of private property and future remediation costs.	Total \$ _____

CONTRACT CLAIMS (Attach additional sheets as necessary)	
Provide a detailed description of claim(s):	
	TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss

SUPERIOR COURT DEPT.
C.A. # BRCV2008-01429A

CIVIL ACTION COVER SHEET – CONTINUATION PAGE

List of Third Party Defendants

Monsanto Company, Pharmacia Corporation, Solutia, Inc., Cornell-Dubilier Electronics, Inc., Della M. Butler, Lillian J. Barnes, Marion J. Barnes, Adelino DeSousa, Maria DeSousa, Harrison W. Joseph, Joseph Oliver, Virginia Oliver, Joseph Oliver, Jenny Oliver, Joseph Oliver, Jr., Jenny Oliver, Jason E. Levine, Mary N. Winderlick, Walter A. Bean, Natalie Bean, Somkhouan Patsakham, Chanhoun Patsakham, Loretta Auger, Manuel Ferro, John T. DaRosa, Ilidia DaRosa, Maria T. DaRosa and John Does 1-20

Counsel for Third Party Defendants

Presently unknown

CIVIL ACTION COVER SHEET INSTRUCTIONS
SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

* CONTRACTS

* REAL PROPERTY

MISCELLANEOUS

A01 Services, Labor and Materials F)	C01 Land Taking (eminent domain) (F)	E02 Appeal from Administrative
A02 Goods Sold and Delivered (F)	C02 Zoning Appeal, G.L. c.40A (F)	Agency G.L. c. 30A (X)
A03 Commercial Paper (F)	C03 Dispute concerning title (F)	E03 Claims against Commonwealth
A08 Sale or Lease of Real Estate (F)	C04 Foreclosure of mortgage (X)	or Municipality (A)
A12 Construction Dispute (A)	C05 Condominium Lien & Charges (X)	E05 Confirmation of Arbitration Awards (X)
A99 Other (Specify) (F)	C99 Other (Specify) (F)	E07 G.L. c.112, s.12S (Mary Moe) (X)
E03 Claims against Commonwealth (A)	E03 Claims against Commonwealth or Municipality (A)	E08 Appointment of Receiver (X)
or Municipality		E09 General Contractor bond, G.L. c. 149, ss. 29, 29a (A)
	EQUITABLE REMEDIES	E11 Worker's Compensation (X)
*TORT	D01 Specific Performance of Contract (A)	E12 G.L.c.123A, s.12 (SDP Commitment) (X)
B03 Motor Vehicle Negligence (F)	D02 Reach and Apply (F)	E14 G.L. c. 123A, s. 9 (SDP Petition) (X)
personal injury/property damage	D06 Contribution or Indemnification (F)	E15 Abuse Petition, G. L. c. 209A (X)
B04 Other Negligence- (F)	D07 Imposition of a Trust (A)	E16 Auto Surcharge Appeal (X)
personal injury/property damage	D08 Minority Stockholder's Suit (A)	E17 Civil Rights Act, G.L. c.12, s. 11H (A)
B05 Products Liability (A)	D10 Accounting (A)	E18 Foreign Discovery Proceeding (X)
B06 Malpractice-Medical (A)	D12 Dissolution of Partnership (F)	E19 Sex Offender Registry G.L. c. 178M, s. 6 (X)
B07 Malpractice-Other (Specify) (A)	D13 Declaratory Judgment G.L. c. 231A (A)	E25 Plural Registry (Asbestos cases)
B08 Wrongful Death, G.L. c.229, s.2A (A)	D99 Other (Specify) (F)	E95 **Forfeiture G.L. c. 94C, s. 47 (F)
B15 Defamation (Libel-Slander) (A)		E96 Prisoner Cases (F)
B19 Asbestos (A)		E97 Prisoner Habeas Corpus (X)
B20 Personal Injury- slip & fall (F)		E99 Other (Specify) (X)
B21 Environmental (F)		
B22 Employment Discrimination (F)		
B99 Other (Specify) (F)		
E03 Claims against Commonwealth (A)		

*Claims against the Commonwealth or a municipality are type E03, Average Track, cases.

****Claims filed by the Commonwealth pursuant to G L c 94C, s 47 Forfeiture cases are type E95, Fast track.**

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

CODE NO.	TYPE OF ACTION (SPECIFY)	TRACK	IS THIS A JURY CASE?
B03	Motor Vehicle Negligence-Personal Injury	(F)	☒ Yes ☐ No

SUPERIOR COURT RULE 29

DUTY OF THE PLAINTIFF. The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

DUTY OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.

**FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.**