

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TOWN OF LEXINGTON on behalf of itself  
And all others similarly situated,

Plaintiff,

v.

PHARMACIA CORPORATION,  
SOLUTIA INC., and MONSANTO  
COMPANY,

Defendants.

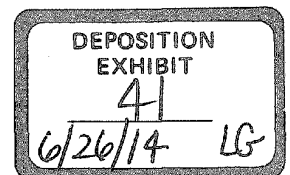
Case No. 12-CV-11645

**DEFENDANT PHARMACIA LLC'S OBJECTIONS AND RESPONSES TO  
PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendant Pharmacia LLC, f/k/a Pharmacia Corporation ("Pharmacia" or "Old Monsanto" or "Defendant"), pursuant to Rule 34 of the Federal Rules of Civil Procedure, hereby objects and responds to Plaintiff's First Set of Requests for Production of Documents below:

**PRELIMINARY STATEMENT**

The corporate relationships of Defendants Pharmacia LLC, a/k/a Old Monsanto; Solutia Inc.; the present Monsanto Company, a/k/a New Monsanto; and Pfizer Inc. are public record and are described briefly in Exhibit A hereto. By agreement of the relevant parties, New Monsanto is the current custodian of records of Pharmacia's (a/k/a Old Monsanto's) extant historical documents relating to the manufacture and sale of PCBs between 1935 and 1977. New Monsanto acts as Pharmacia's agent in managing the defense of this litigation on Pharmacia's behalf, including providing assistance to Pharmacia in the fulfillment of its discovery obligations under the Federal Rules of Civil Procedure and the local rules of this Court. Accordingly,



Pharmacia responds to Plaintiffs' Requests for Production of Documents based on the information and historical documents relating to the manufacture and sale of PCBs between 1935 and 1977 that are available to Pharmacia and its attorneys pursuant to agreement with New Monsanto, the current custodian of such historical documents.

Pharmacia reserves the right, prior to or at the time of trial, to introduce any evidence from any source that may hereafter be discovered and any testimony of any witness whose identity may hereafter be discovered or revealed. The following responses are, therefore, provided without prejudice to Pharmacia's rights to rely on facts and documents that may subsequently be discovered or recalled in the future, and to raise contentions and arguments based thereon. To the extent any such information becomes available, Pharmacia will produce such information in accordance with its obligations under the Federal Rules of Civil Procedure.

#### **GENERAL OBJECTIONS**

Each of the following General Objections is incorporated into each individual response below as if set out in full.

1. Pharmacia objects to these Requests for Production of Documents to the extent they seek information protected by the attorney-client privilege, the consulting expert privilege or the attorney work product doctrine or other privileges or immunities. All responses herein are made subject to and without waiving any applicable privileges, and without any intent to divulge privileged information or documents.

2. Pharmacia objects to these Requests to the extent they seek information that is otherwise equally available or more available to Plaintiff or its attorneys.

3. Pharmacia objects to Plaintiff's Requests because some of them are virtually unlimited in time and scope, and, as phrased, appear to seek information and documents about

events occurring as long as eighty-four years ago. Pharmacia has undertaken a reasonable effort to prepare its responses to these Requests for Production of Documents, but notes that persons with relevant knowledge are quite often deceased or otherwise unavailable after the passage of so many years, and other persons who may have had relevant knowledge or information at one time may now have little or no specific recall of such knowledge or information.

4. Pharmacia objects to Plaintiff's Requests for Production of Documents to the extent they seek information or documents other than as kept by Pharmacia in the ordinary course of its former business with respect to the manufacture and sale of polychlorinated biphenyls between the dates of 1935 to 1977.

5. Pharmacia objects to the Requests for Production of Documents that seek information about PCBs or PCB-containing products other than those which the Plaintiff claims are or were present in caulk on its property at Estabrook Elementary School as alleged in the Complaint on the grounds that such Requests for Production of Documents are overly broad, unduly burdensome and seek information not reasonably calculated to lead to the discovery of admissible evidence.

#### **OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION**

##### **REQUEST FOR PRODUCTION NO. 1:**

All documents concerning the geographic distribution of PCBs or PCB-containing products in the United States.

**RESPONSE:** Pharmacia incorporates its General Objections. Pharmacia further objects to Request No. 1 on grounds that it is a grossly overbroad, vague and burdensome fishing expedition (including in that it is not confined to the caulk end-products manufactured by others that allegedly are at issue in this lawsuit) and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The burden and expense

to Pharmacia of responding to this grossly overbroad request, inquiring about matters that occurred over more than a 50 year time period starting in the 1920s or 1930s, and a plasticizer business that ceased to exist approximately 44 years ago, far outweighs any conceivable alleged speculative benefit to Plaintiffs of the vast amount of irrelevant information sought. Subject to and without waiving its objections, Pharmacia states:

Documents bates labeled MCL000121 - 166 include a list of Pharmacia's PCB plasticizer customers as of February 1970 and the addresses of such customers and will be made available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts.

**REQUEST FOR PRODUCTION NO. 2:**

All documents concerning the volume of PCBs or PCB-containing products distributed to users in Massachusetts.

**RESPONSE:** Pharmacia incorporates its General Objections. Pharmacia further objects to Request No. 2 on grounds that it is a grossly overbroad, vague and burdensome fishing expedition (including in that it is not confined to the caulk end-products manufactured by others that allegedly are at issue in this lawsuit) and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The burden and expense to Pharmacia of responding to this grossly overbroad request, inquiring about matters that occurred over more than a 50 year time period starting in the 1920s or 1930s, and a plasticizer business that ceased to exist approximately 44 years ago, far outweighs any conceivable alleged speculative benefit to Plaintiffs of the vast amount of irrelevant information sought. Further, the request improperly seeks to shift the burden of proof concerning the identity of the manufacturer(s) of the PCB-containing caulk product alleged to be present on Plaintiff's property at Estabrook Elementary School from Plaintiff -- the purchaser of such product -- to Pharmacia, the alleged supplier of a component or constituent part in the end-product alleged to have been





manufactured by unknown construction product manufacturers. Subject to and without waiving its objections, Pharmacia states:

If and when Plaintiff identifies the manufacturer(s) of the PCB-containing caulk product alleged to be present at Estabrook Elementary School, Pharmacia will research and provide available information about the amount and type of PCBs, if any, sold by Pharmacia to such entity(ies).

**REQUEST FOR PRODUCTION NO. 3:**

All documents concerning market share analysis of your PCB business.

**RESPONSE:** Pharmacia incorporates its General Objections. Pharmacia further objects to Request No. 3 on grounds that it is an overbroad, vague and burdensome fishing expedition and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Pharmacia states:

Please see Brievik 2002a, *Science of the Total Environment*, 29:181–198; Brievik 2007, *Science of the Total Environment*, 377:296-307; and Commission for Environmental Cooperation (CEC) 1996 Report, *Status of PCB Management in North America* (documents reflecting Pharmacia's 39% or less global market share of PCB sales), which have been bates labeled LEXOLDMON003371 – 003558 and are available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts. Additional documents describing U.S. and global market shares for various PCB manufacturers (including but not limited to Old Monsanto) from 1966 through 1975 will be bates labeled and made available for inspection and photocopying.

**REQUEST FOR PRODUCTION NO. 4:**

All documents concerning the presence of PCBs in schools.

**RESPONSE:** Pharmacia incorporates its General Objections. Pharmacia further objects to Request No. 4 on grounds that it is overbroad and vague, seeks information that potentially invades Pharmacia's attorney work product privilege and prematurely seeks information that may be, at least in part, the subject of expert opinion. Further, it improperly seeks to reverse the burden of proof from Plaintiff to Defendants to identify documents concerning the alleged "presence of PCBs in schools." Subject to and without waiving its objections, Pharmacia states:

Pharmacia's expert opinions and the bases therefor will be timely and properly disclosed in accordance with the Federal Rules of Civil Procedure and the Scheduling Orders of this Court.

**REQUEST FOR PRODUCTION NO. 5:**

All documents identifying school buildings that contain PCBs.

**RESPONSE:** Pharmacia incorporates its General Objections. Pharmacia further objects to Request No. 5 on grounds that it is a grossly overbroad, vague and burdensome fishing expedition, that calls for speculation and conjecture and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, it improperly seeks to reverse the burden of proof from Plaintiff to Defendants to identify "school buildings that [allegedly] contain PCBs." Subject to and without waiving its objections, Pharmacia states:

To the extent the presence of PCBs is investigated and/or confirmed in Estabrook Elementary School during the course of discovery in this litigation, Defendants' experts who may opine on this subject will be identified in accordance with the Federal Rules of Civil Procedure and the Scheduling Orders of this Court. Other than this lawsuit, Pharmacia has knowledge of only one other lawsuit making allegations of PCBs in caulk in a school building in Massachusetts (New Bedford High School). That lawsuit is styled: DaRosa v. City of New Bedford v. Monsanto Company et al., Commonwealth of Massachusetts, Superior Court Dept.,

C.A. #BRCV2008-01429A. Pharmacia will make available for inspection and copying the DaRosa complaint, to the extent Plaintiff does not already have it.

**REQUEST FOR PRODUCTION NO. 6:**

All documents concerning the United States Environmental Protection Agency's Public Health Levels of PCBs in School Indoor Air.

**RESPONSE:** Pharmacia incorporates its General Objections. Pharmacia further objects to Request No. 6 on grounds that it is overbroad and vague, seeks publicly available information, potentially invades Pharmacia's attorney work product privilege and prematurely seeks information that may be, at least in part, the subject of expert opinion. Subject to and without waiving its objections, Pharmacia states:

The United States EPA did not begin operations until late 1970, after Pharmacia had ceased sales of PCBs for plasticizer uses. The Toxic Substances Control Act ("TSCA") was not enacted until 1976. Section 6(e) of TSCA, 15 U.S.C. §2605(e), became effective January 1, 1977. Under the authority granted to it by TSCA, EPA prohibited the manufacture, distribution or use of PCBs except in a totally enclosed manner after January 1, 1978, unless specifically authorized by EPA and banned all manufacture and distribution of PCBs effective in 1979. In 1977, however, Pharmacia had already voluntarily ceased the manufacture and sale of PCBs for closed electrical equipment use – the only remaining use after the early 1970's – because the electrical equipment manufacturers advised that they had developed acceptable substitute (although flammable) dielectric fluids, that would permit the continued operation of the United States power grid. For these reasons, Pharmacia's historical files concerning the manufacture and sale of PCBs between 1935 and 1977 do not include documents relating to "United States Environmental Protection Agency's Public Health Levels of PCBs in School Indoor Air."

Pharmacia's expert opinions and the bases therefor will be timely and properly disclosed in accordance with the Federal Rules of Civil Procedure and the Scheduling Orders of this Court.

**REQUEST FOR PRODUCTION NO. 7:**

All documents concerning the activities of the "ad hoc" committee formed by Monsanto Company on or about August 25, 1969.

**RESPONSE:** Pharmacia objects to Request No. 7 on grounds that it is overbroad and vague. Subject to and without waiving its objections, Pharmacia states:

Pharmacia has previously identified in its Initial Disclosures documents concerning the activities of the PCB "ad hoc" committee (LEXOLDMON000001-001168). Those documents have been and remain available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts. To the extent additional non-privileged documents exist concerning the activities of the "ad hoc" committee, they are included in the MONS collection of documents (MONS000001 – 100120) identified in response to Plaintiff's Interrogatories and will be made available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts.

**REQUEST FOR PRODUCTION NO. 8:**

Your PCB Environmental Pollution Abatement Plan from 1969.

**RESPONSE:** Pharmacia objects to Request No. 8 on grounds that it is overbroad and vague. Subject to and without waiving its objections, Pharmacia states:

Pharmacia has previously identified in its Initial Disclosures documents concerning the PCB Environmental Pollution Abatement Plan (LEXOLDMON000001-001168). Those documents have been and remain available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts. To the extent additional non-privileged documents exist concerning Pharmacia's investigation, action plans and responses to the reports

of the environmental persistence of certain types of PCBs, they are included in the MONS collection of documents (MONS000001 – 100120) identified in response to Plaintiff's Interrogatories and will be made available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts.

**REQUEST FOR PRODUCTION NO. 9:**

All documents concerning statements made by R. Emmet Kelly, M.D. related to PCBs, including written deposition and trial transcripts and audio-visual recordings.

**RESPONSE:** Pharmacia objects to Request No. 9 on grounds that it is overbroad, vague and burdensome and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, including in that most PCB litigation historically has been brought by plaintiffs alleging personal injury as a result of exposure to PCBs (typically electrical industry workers or neighbors of industrial manufacturing facilities), rather than litigation alleging damages due to the presence of PCBs in building products. Subject to and without waiving its objections, Pharmacia states:

Dr. Kelly died many years ago (in August 1995 at the age of 85) and consequently he was not deposed in the DaRosa v. City of New Bedford or Yorktown litigation identified in response to Plaintiff's interrogatories. Dr. Kelly was deposed for many days in May 1990 in a case styled Brown v. Monsanto, where the plaintiffs alleging personal injuries were former employees of a Westinghouse capacitor manufacturing plant in Bloomington, Indiana. That deposition transcript has been bates labeled LEXOLDMON 001527-1779 and will be made available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts. Additionally, documents authored by and statements of Dr. Kelly concerning PCBs and health, safety and/or the environment are contained within the MONS set of documents identified in response to Plaintiff's interrogatories (MONS000001 – 100120) and will be made available for inspection

and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts. To the extent Plaintiff demands additional transcripts of Dr. Kelly's testimony from dissimilar litigation, this request imposes an undue burden and expense in responding that outweighs any conceivable speculative benefit to Plaintiff. Due to the burden and marginal relevance of any transcripts requested other than from Brown v. Monsanto, Pharmacia will produce copies of such transcripts only upon request and agreement by Plaintiff's counsel to reimburse Pharmacia for reasonable copying costs and legal assistant time in obtaining, copying and producing those transcripts.

**REQUEST FOR PRODUCTION NO. 10:**

All documents concerning statements made by William P. Papageorge related to PCBs, including written deposition and trial transcripts and audio-visual recordings.

**RESPONSE:** Pharmacia objects to Request No. 10 on grounds that it is overbroad, vague and burdensome and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, including in that most PCB litigation historically has been brought by plaintiffs alleging personal injury as a result of exposure to PCBs (typically electrical industry workers or neighbors of industrial manufacturing facilities), rather than litigation alleging damages due to the presence of PCBs in building products. Subject to and without waiving its objections, Pharmacia states:

Mr. William B. Papageorge died in May 2012 at the age of 89. His last deposition occurred in May 2007, in a case styled Paulson v. Monsanto (that was pending in State Court in Montana and involved allegations concerning PCBs in industrial paint). Mr. Papageorge was not deposed in the DaRosa v. City of New Bedford or Yorktown litigation identified in response to Plaintiff's interrogatories. The multi-volume Paulson deposition transcript of Mr. Papageorge will be made available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts. Additionally, documents authored by and statements of Mr. Papageorge

concerning PCBs and health, safety and/or the environment are contained within the MONS set of documents identified in response to Plaintiff's interrogatories (MONS000001 – 100120) and will be made available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts. To the extent Plaintiff demands additional transcripts of Mr. Papageorge's testimony from dissimilar litigation, this request imposes an undue burden and expense in responding that outweighs any conceivable speculative benefit to Plaintiff. Due to the burden and marginal relevance of any transcripts requested other than from Paulson v. Monsanto, Pharmacia will produce copies of such transcripts only upon request and agreement by Plaintiff's counsel to reimburse Pharmacia for reasonable copying costs and legal assistant time in obtaining, copying and producing those transcripts.

**REQUEST FOR PRODUCTION NO. 11:**

All documents described in your November 7, 2013 Initial Disclosures.

**RESPONSE:** All documents described in Pharmacia's November 7, 2013, Initial Disclosures have been and remain available for inspection and photocopying at the offices of Pharmacia's counsel in Boston, Massachusetts.

**DEFENDANT,**

PHARMACIA LLC,

By its attorney,

CAMPBELL CAMPBELL EDWARDS &

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CERTIFICATE OF SERVICE

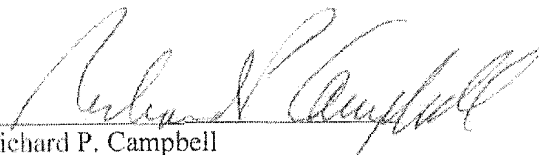
I hereby certify that a true copy of the above document was served upon the following counsel of record by regular, first class mail and by email on January 24, 2014:

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**EXHIBIT A TO RESPONSES OF DEFENDANT PHARMACIA LLC, f/k/a  
PHARMACIA CORPORATION,  
TO PLAINTIFF TOWN OF LEXINGTON'S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

1. Prior to September 1, 1997, Old Monsanto n/k/a Pharmacia Corporation essentially comprised three business units: (i) chemical; (ii) agricultural; and (iii) pharmaceutical. On September 1, 1997, Old Monsanto spun-off into Solutia (which became an independent, publicly traded company) certain of Old Monsanto's then-existing and former chemical businesses (including Old Monsanto's former PCB business).

2. In 2000, Old Monsanto merged with Pharmacia & UpJohn, Inc. ("PNU"), a publicly-owned pharmaceuticals company, with Old Monsanto being the surviving corporation. Upon completion of the merger in March 2000, Old Monsanto changed its name from Monsanto to Pharmacia Corporation ("Pharmacia"). Later in 2000, Pharmacia transferred its agricultural business to a newly-created corporation named Monsanto Company, or "New Monsanto." In August 2002, New Monsanto became an independent, publicly traded company. In April 2003, Pharmacia (having retained Old Monsanto's pharmaceutical business), became a wholly owned subsidiary of Pfizer Inc., a pharmaceutical company. Today, of the two former business units of Old Monsanto n/k/a Pharmacia, Solutia has the chemicals unit and New Monsanto, n/k/a Monsanto Company, has the agricultural unit. PCBs have not been manufactured in the United States since 1977. Neither Solutia, New Monsanto, nor Pfizer ever conducted any operations involving the production, sale, or distribution of PCBs.

3. On December 17, 2003, Solutia filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Solutia's Fifth Amended Bankruptcy Plan was confirmed by the Bankruptcy Court on Nov. 27, 2007, and became effective on February 28, 2008. In connection with the confirmation of Solutia's bankruptcy reorganization, Solutia and

New Monsanto entered into certain agreements concerning the parties' responsibilities for tort and environmental claims.

4. By agreement of the relevant parties, New Monsanto is the current custodian of records of Old Monsanto's extant historical documents relating to the manufacture and sale of PCBs between 1935 and 1977 and acts as Pharmacia's agent in managing the defense of this litigation on behalf of Pharmacia, including assisting Pharmacia in the fulfillment of its discovery obligations under the Federal Rules of Civil Procedure and the local rules of this Court. Accordingly, Pharmacia's responses herein are based on the information and historical documents relating to the manufacture and sale of PCBs between 1935 and 1977, that are available to Pharmacia and its attorneys pursuant to agreement with New Monsanto, the current custodian of such historical documents.