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Attorney for Plaintiffs

Filed this 5th day of February 2004
Phyllis D. Smith
Clerk of District Court
Phyllis D. Smith
Deputy Clerk

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

MARTY PAULSON, WILLIAM J. HAUGEN and HARRY FELTON, Individually and For All Persons Similarly Situated,

Plaintiffs,

v.

MONSANTO CHEMICAL COMPANY n/k/a PHARMACIA, MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS, and JOHN DOE PAINT COMPANIES and DISTRIBUTORS I through X,

Defendants.

Cause No. DV-2004-8

COMPLAINT AND JURY DEMAND

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PLAINTIFFS, for themselves, and all other members of the class herein described, would respectfully show to the Court:

I

The named Plaintiffs are residents of the County of Fergus, State of Montana.

II

Big Spring Creek is a stream originating approximately eight (8) miles southeast of Lewistown, Montana. Big Spring Creek travels generally south to north for approximately 25 miles where it empties into the Judith River. Big Spring Creek is nature's treasured gift to Central Montana. It is a first class fishery and provides a variety of recreational opportunities. It provides irrigation for agricultural and domestic uses. Land that lies adjacent to or near Big Spring Creek has value for these reasons.

III

This action is brought by Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Rule 23 M. R. Civ. P.

Defendant, Monsanto Chemical Company, now known as (n/k/a) Pharmacia is a corporation organized under the laws of the State of Delaware.

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Defendant Monsanto Chemical Company produced polychlorinated biphenyls (PCB's) known as Aroclors.

Defendant Montana Department of Fish, Wildlife and Parks is an agency of the State of Montana. This Defendant (and its predecessors) owns and operates the Big Spring Creek Trout Hatchery located at the source of Big Spring Creek.

Defendant John Doe Paint Companies and Distributors I through X are manufacturers and distributors of paints containing PCB's known as Aroclors. Paint manufactured and distributed by these defendants was used to paint the raceways of the Big Spring Creek Trout Hatchery.

IV

The class so represented by Plaintiffs in this action, and of which plaintiffs are members, consists of all real property owners who own land adjacent to Big Spring Creek and all owners and users of water rights in Big Spring Creek.

V

The class identified above is composed of more than 100 (One-Hundred) members. The class is so numerous that joinder of individual members herein is impracticable.

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VI

The causes of action asserted by the class against all Defendants are as follows:

a) The waters of Big Spring Creek have been polluted by Aroclors since 1960 and continue to be so polluted. The source of the pollution has been traced to the paint on the raceways of Big Spring Creek Trout Hatchery.

Article II, Section 3 of the Montana Constitution provides that all citizens of Montana, including the class identified here, have the inalienable right to a clean and healthy environment. The pollution caused by Defendants violates this provision of the Montana Constitution;

b) The pollution described above constitutes a temporary or permanent nuisance;

c) The pollution described above as to Defendants Monsanto, Pharmacia and John Doe Paint Companies is a nuisance per se;

d) The pollution described above as to Defendant Montana Department of Fish, Wildlife and Parks is a qualified nuisance based upon the negligence of this Defendant in the operation and maintenance of the Big Spring Creek Fish Hatchery.

e) Defendants should be permanently enjoined from polluting Big

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Spring Creek.

f) All Defendants should be required to participate in a remediation and cleanup of the PCB's contained in Brig Spring Creek according to Montana pollution cleanup laws.

All class members have and will continue to suffer a diminution in property values caused by said pollution and the stigma of owning land adjacent or near a stream polluted by probable carcinogens.

VII

By the 1960's Defendant Monsanto had learned that PCB's were harmful to the environment, From the 1960's until the present time, Monsanto fraudulently concealed this information from its PCB customers and the eventual users and consumers of products containing Aroclors. Had Monsanto taken reasonable and necessary steps to warn its PCB customers and eventual users and consumers of products containing Aroclors, of the harm to the environment caused by PCB's, the pollution of Big Spring Creek could have been prevented,

VIII

There are common questions of law and fact in this action that relate to the right of each member of the class; and the relief sought is common to the

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entire class, namely the nature and extent of the damage to the property owned by the class members and the type of harm suffered by the class members.

IX

The claims of Plaintiffs, who are representatives of the class herein, are typical of the claims of the class, in that the claims of all members of the class, including Plaintiffs, depends on the showing of the acts of omissions of Defendants giving rise to the right of Plaintiffs to the relief sought herein. There is no conflict as between any individual named Plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

X

This action is properly maintained as a class action in that the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class,

This action is properly maintained as a class action inasmuch as the object of this action is the adjudication of claims, which do or may affect specific property involved herein, all as more fully set forth above. This action

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is properly maintained as a class action inasmuch as the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

XI

Based upon the foregoing allegations, especially the allegations of paragraph VII, the Defendants, excluding the Defendant Montana Department of Fish Wildlife and Parks, are liable for punitive damages under Montana law.

Wherefore, Plaintiffs request for themselves and all other members of the class that:

1. The rights of the class members to this action be adjudicated and declared;

2. Defendants be permanently restrained and enjoined from polluting Big Spring Creek;

3. Defendants be required to cleanup the PCB pollution in Big Spring Creek according to Montana law.

4. Plaintiffs class be awarded damages incident to the equitable relief requested, in a sum exceeding the minimum jurisdictional limits of the court; and

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5. Plaintiffs' class be awarded punitive damages as allowed by Montana law.

6. Plaintiffs have such other and further relief as the Court may deem appropriate, including *costs* and expenses.

7. Plaintiffs demand trial by jury.

DATED this 5th day of February, 2004.

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Attorney for Plaintiffs

WILLIAM E. BERGER
Attorney for Plaintiffs

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CASE REGISTER REPORT

Statue; OP **Closed** Date;

File Number: DV-14-2004-8 From Seq #: **Filing** Date: **02/05/2004**
Title: *MARTY* PAULSON, ET AL., VS MONSANTO CHEMI Last **Opened Date: 02/05/2004**
Action Text: DAMAGES First **Cloeed** Dare;

Type	Stat	NType	Name	AStat	Attorneys
Plaintiff/Petitioner					
P	ACT		PAULSON, **MARTY**	ACT	OAAS, TORGER S.
				ACT	BERGER, WILLIAM E.
				ACT	OLDENBURG, JON A.
				ACT	BUEHLER, CRAIG R.
?	ACT		**HAUGEN, WILLIAM J.**	ACT	OAAS, TORGER S.
				ACT	BERGER, WILLIAM E.
				ACT	OLDENBURG, JON A.
				ACT	BUEHLER, CRAIG R.
P	ACT		**FELTON, HARRY**	ACT	OAAS, TORGER S.
				ACT	BERGER, WILLIAM E.
				ACT	OLDENBURG, JON A.
				ACT	BUEHLER, CRAIG R.
P	ACT		ROBERTSON, RAY	ACT	OAAS, TORGER S.
				ACT	BERGER, WILLIAM E.
				ACT	OLDENBURG, JON A.
				ACT	BUEHLER, CRAIG R.
P	ACT		BURLEIGH, **WARD**	ACT	OAAS, TORGER S.
				ACT	BERGER, WILLIAM E.
				ACT	OLDENBURG, JON A.
				ACT	BUEHLER, CRAXC R.
D	ACT	NKA	MONSANTO **CHEMICAL** *COMPANY* **PHARMACIA**		
D	ACT		**MONTANA** DEPARTMENT **OF** FISH, WILDLI		
D	ACT		**JOHN** DOE PAINT COMPANIES		
D	ACT		DISTRIBUTOR3 1 **THROUGH** X		

Judge	Dept	Start Dt	Status
PHILLIPS, E. WAYNE		02/05/2004	ACTIVE JUDGE IN CASE

HARTOLDMON0095746

CASE REGISTER REPORT (Continued)

Status: OP Closed Date:
File Number: DV-14-2004-8 From Seq #: Filing Date: 02/05/2004
Title: MARTY PAULSON, ET AL., VS MONSANTO CHEMI Last Opened Date: 02/05/2004
Action *Text:* DAMAGES First Closed Date:

Seq#	Ent Dt	File Dt	Register Text	Amount	Book	Film
1.0	02/05/04	02/05/04	COMPLAINT *AND* JURY DEMAND	$120.*00*		IMAGED-I
2.0	03/08/04	03/08/04	AMENDED COMPLAINT AND *JURY* DEMAND			IMAGED-I
3.0	03/08/04	03/08/04	SUMMONS ISSUED TO MONSANTO CHEMICAL COMPANY N/K/A PHARMACIA 3/8/04;			
4.0	03/08/04	03/08/04	SUMMONS ISSUED TO MONTANA DEPARTMENT OF FISH, WILDLIFE *AND* PARKS *3/8/04;*			
5.0	03/08/04	03/08/04	SUMMONS ISSUED TO PHARMACIA 3/8/04;			

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A ***FAX*** *FROM*
the office of:

Phyllis D. Smith
Clerk of Court
Montana, Tenth Judicial District Court
Fergus County-PO Box 1074-Lewistown MT 59457

Phone 406-538-5026 *Fax* 406-538-6076

DATE: April 1, 2004

TO: Jay Page 1 of 11

FAX # 406-443-6882

M E S S A G E :

Jay - Pursuant to your request, I am faxing the original Complaint and Jury Demand and docket sheet.

The cost for faxing us $10.00.

Thank you.

Phyllis Smith

REPLY REQUESTED: ***Yes*** No

REPLY TO: _____

If you should receive this **fax** in error, please contact the Clerk of Court's office at 406-538-5026 or **fax** back to 406-538-6076. Thank you for your consideration!!!