IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Virdie Allen, an individual and resident of the State of Illinois; Zina G. Bibb, an individual and resident of the State of Ohio; Evelyn Smith Cash, an individual and resident of the State of New York; Hillman Raynes and Erma Raynes, husband and wife; Donald R. Rhodes and Wanda M. Rhodes, husband and wife; Charles Agee and Eileen Agee, husband and wife; Herbert W. Dixon and Norma J. Dixon, husband and wife; Charles S. Tyson and Betty Tyson, husband and wife; Herschell E. Winter and Jeannette Winter, husband and wife,

Plaintiffs,

Vs. CIVIL ACTION NO. 09C165
Spaulding

MONSANTO COMPANY, *a Delaware corporation, with its principal place of business in the State of Missouri;*
PHARMACIA CORPORATION, *a Delaware corporation, with its principal place of business in the State of Missouri;*
AKZO NOBEL CHEMICALS INC., *a Delaware corporation, having its principal offices in the State of Illinois;*
AKZO NOBEL SERVICES, INC., *a Delaware corporation, having its principal offices in the State of Illinois;*
AKZO CHEMICALS, INC., *a Delaware corporation, having its principal place of business in the State of Illinois;*
FLEXSYS AMERICA CO., *a Delaware corporation, having its principal place of business in the State of Ohio;*
FLEXSYS AMERICA, L.P., *a Delaware corporation, having its principal place of business in the State of Ohio;*
FLEXSYS INTERNATIONAL, L.P.,

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a Delaware corporation, having its principal place of business in the State of Ohio; and
FLEXSYS INTERNATIONAL CO., *a Delaware corporation, having its principal place of business in the State of Ohio,*

Defendants.

CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs are residents and/or former residents of one or more of several communities surrounding a now defunct chemical plant located near Nitro, West Virginia.

2. The former Monsanto Company (hereafter Old Monsanto) owned and operated the plant from approximately 1934 to approximately 2000. Beginning in 1949 and continuing through 1971 Old Monsanto produced at the plant site an agricultural herbicide 2,4,5 – trichlorophenoxyacidic acid (hereafter 2,4,5-T) which was heavily contaminated with dibenzo dioxins and dibenzo furans including 2,3,7,8 tetrachlorodibenzoparadioxin (hereafter collectively dioxins/furans).

3. Plaintiffs, on behalf of themselves and others similarly situated, bring this action against the defendants and each of them for directly causing plaintiffs' person and real property to become contaminated with the dioxins/furans produced at the Old Monsanto plant in Nitro, WV, and plaintiffs further bring this action against the above named defendants and each of them as successors to the dioxins/furans related legacy liabilities of the Old Monsanto Company's Agricultural Division for causing plaintiffs' person and real property to become contaminated with the aforesaid dioxins/furans.

4. As a result of the aforesaid dioxins/furans contamination, the plaintiffs seek to recover money from the defendants for property damage caused by dioxins/furans contamination, and the plaintiffs seek to recover the costs of future medical examinations and tests for the early detection of serious diseases related to abnormal exposures to dioxins/furans.

5. Because defendants are continuing at the present time to contaminate the plaintiffs' property with dioxins/furans by failing to control the dioxins/furans contaminated surface of the aforesaid Old Monsanto Nitro plant, plaintiffs are also seeking a permanent injunction against the defendants to stop further contamination of plaintiffs' person and property.

6. The putative class plaintiffs seek to represent is made up of persons:

a. who currently, or in the past, reside or resided in one or more of the communities surrounding the Old Monsanto chemical plant in Nitro, WV, during the time period 1949 through the present; and,

b. who currently, or in the past, work or worked in one or more of the communities surrounding the old Monsanto chemical plant in Nitro; and,

c. who currently, or in the past, were students in one or more of the public schools located in one or more of the communities surrounding the Old Monsanto chemical plant in Nitro, WV;

all of whom, because of the defendants' dioxins/furans contamination of their communities, homes, places of employment and school buildings are at an increased risk for the development in the future of serious and life shortening diseases as a consequence of their abnormal exposure to dioxins/furans.

7. The class of persons plaintiffs seek to represent is also made up of persons who currently own real property in one or more of the communities surrounding the Monsanto

Chemical plant in Nitro, WV, and whose property is contaminated with dioxins/furans generated by the Old Monsanto chemical plant in Nitro.

8. Plaintiffs' claims arise from Old Monsanto's Agricultural Division's production of the aforesaid dioxins/furans contaminated agricultural herbicide 2,4,5-T at the aforesaid Nitro chemical plant during the period 1949 through approximately 1971.

9. In addition to Old Monsanto's Agricultural Division's 2,4,5-T unit at the Nitro plant, Old Monsanto's Chemical Division also operated various production units at the Nitro plant during the period 1935 through approximately March, 2000, manufacturing non-agriculturally related chemical products.

10. Plaintiffs make no claim against Old Monsanto's Chemical Division or any of its products, and plaintiffs make no claim in this litigation against the defendants directly or as successors to Old Monsanto for any injuries or damages in any way related to Old Monsanto's Chemical Division products.

11. Plaintiffs further define their claims by alleging that Old Monsanto Company entered into a series of complex business arrangements, more particularly detailed below, beginning in the mid 1990's, which resulted in Old Monsanto changing the name of a subsidiary company known as the Queeny Chemical Company to Solutia, Inc. Old Monsanto then transferred its Chemicals Division business and the Chemicals Division's liabilities to the newly named Solutia, including the Chemicals Division's business that was conducted at the aforesaid Nitro Plant.

12. Old Monsanto did not transfer the Old Monsanto Agricultural Division to Solutia and more particularly did not transfer the Old Monsanto's legacy liability for dioxins/furans

contamination at the Nitro plant and surrounding communities caused by Old Monsanto's Agricultural Division's manufacture of 2,4,5-T during the period 1949 through 1971.

13. Plaintiffs' claims herein relating to environmental contamination, property damage and medical monitoring are strictly limited to Old Monsanto's Agricultural Division's dioxins/furans contaminated product 2,4,5-T and any of its dioxins/furans contaminated chemical precursors.

14. Solutia, Inc., the recipient of Old Monsanto Company's Chemicals Division business as well as Old Monsanto's legacy liabilities for environmental contamination, property damage, and personal injury arising from the production of Chemicals Division products, is currently in Chapter 11 Reorganization in the United States Bankruptcy Court for the Southern District of New York. Plaintiffs make no claim here against Solutia's Chemicals business as a successor to Old Monsanto's Chemicals Division business. Certain members of the putative class and the named plaintiffs herein have filed claims in the bankruptcy proceeding against Solutia alleging dioxin/furan contamination of their person and property primarily for the time period during which Solutia owned the plant site and permitted dioxin/furan dust to escape the plant site.

IDENTITY OF PARTIES

A. General Description of Persons Making Up Putative Class

15. The plaintiffs, at all times relevant to their claims, were citizens and residents of the State of West Virginia.

16. Certain of the plaintiffs lived in or occupied and otherwise maintained, owned, rented, leased and/or otherwise controlled residences and or commercial property in and about

the several communities located in Putnam and Kanawha Counties, West Virginia, and are hereafter referred to as the "Property Plaintiffs".

17. As more fully appears below, the Property Plaintiffs complain that the defendants have caused the inside of their homes and their real property to be contaminated with dioxin/furans generated by the defendants' contaminated 2,4,5-T process at the Nitro plant.

18. Certain of the plaintiffs, hereafter referred to as the "Employed Plaintiffs", complain that their places of employment located in the various communities in the area of the Nitro plant were also contaminated with the aforesaid dioxins/furans.

19. Certain of the plaintiffs, hereafter referred to as the "Public School Plaintiffs", complain that the schools in the area were likewise contaminated with the aforesaid dioxins/furans, causing plaintiffs who attended these schools in the past and plaintiffs who attend schools now to be exposed to the aforesaid dioxins/furans during the school year.

20. Several thousand people and several thousand parcels of real property, residential, commercial, and governmental, including the improvements thereon, have been adversely affected and damaged as a consequence of the events and conditions complained of herein.

21. The latest Census puts the population of Nitro WV at 6,824. Of this number 403 are under age 5 years. Total housing units number 3,217. The median value of these houses is $69,000.

22. The City of Saint Albans total population as of the Census is 11,567. Of this number, 605 are under 5 years of age. Total housing units number 5,467 with a median value of $77,000.

23. In addition to incorporated towns, there are numerous populated suburban communities in the area of the Old Monsanto plant, all of which are at risk for the aforesaid dioxins/furans contamination.

B. Identification of Representative Plaintiffs.

24. Virdie Allen is a resident and citizen of the State of Illinois, residing 205 Sarah Street, Shorewood, Illinois. She has lived at this address for 22 years. The first 19 years of her life she lived in Nitro, WV on 36th Street and on 41st Street. Ms. Allen lived in Nitro from approximately 1952 until 1971 and attended grade school, junior high school and high school in Nitro, WV. She has a claim for medical monitoring.

25. Zina Bibb is a resident and citizen of the State of Ohio and has been for a number of years, residing at 824 E. Como Ave., Columbus, Ohio. Ms. Bibb grew up in Nitro and attended public schools there, graduating from Nitro High School. She has a claim for medical monitoring.

26. Evelyn Smith Cash, is a resident and citizen of the State of New York, residing at 15 Oliver Avenue, White Plains, NY. From birth until young adulthood she lived on Oliver Street in Amandaville near St. Albans, WV. This community is down wind and directly across the Kanawha River from heavily dioxin/furan contaminated homes in Nitro, WV. Amandaville is approximately two miles from the old Monsanto Plant. Ms. Cash has a claim for medical monitoring.

27. Hillman Raynes and Erma Raynes are husband and wife. They reside at 4046 40th Street, Nitro, Putnam County, WV, and have lived there for 43 years. The Rayneses own real estate in Nitro. Recent testing of their home shows it to be contaminated with the aforesaid dioxins/furans. Mr. and Mrs. Raynes have claims for property damage and medical monitoring.

28. Donald R. Rhodes and Wanda M. Rhodes are husband and wife and reside at 1205 12th Street, Nitro, Kanawha County, WV, and have lived at that address for 45 years. Mr. and Mrs. Rhodes own real estate in Nitro. Recent testing of their home reveals high levels of the aforesaid dioxins/furans. Mr. and Mrs. Rhodes each have a claim for property damage and medical monitoring. Mr. Rhodes was employed in Nitro, WV at the Avtex plant from 1967 to 1980.

29. Charles Agee and Eileen Agee are husband and wife and reside at 2117 21st Street, Nitro, Kanawha County, WV. The Agees have lived there for 33 years. Mr. and Mr. Agee own real estate in Nitro. Recent testing of their home shows it to be highly contaminated with the aforesaid dioxins/furans. Mr. and Mrs. Agee each have property damage claims and each have claims for medical monitoring.

30. Herbert W. Dixon and Norma J. Dixon are husband and wife and reside at 1435 14th Street, Nitro, Kanawha County, WV. Mrs. Dixon has lived in Nitro most of her life and Mr. Dixon has lived in Nitro since 1952. The Dixons own real estate in Nitro. Recent testing of their home reveals that it is contaminated with the aforesaid dioxins/furans. The Dixons have claims for property damage and medical monitoring.

31. Charles S Tyson and Betty Tyson are husband and wife and reside at 1523 W. 15th Street, Nitro, Kanawha County, WV. The Tysons have lived at this address for 44 years. The Tysons own real estate in Nitro and each has a claim for property damage as well as medical monitoring inasmuch as recent testing reveals high levels of the aforesaid dioxins/furans in their home.

32. Herschell E. Winter and Jeannette Winter are husband and wife and reside at 1002 Main Avenue, Nitro, Kanawha County, WV. The Winters have lived at this address since 1973.

The Winters own real estate in Nitro and each has a claim for property damage and for medical monitoring. Tests of their home reveal high levels of dioxins/furans.

C. Identification of Defendants.

1. The Legacy of "Old Monsanto".

33. Old Monsanto was created soon after the turn of the last century and operated continuously either as the Monsanto Chemical Company or simply as the Monsanto Company, until its pupation into one or more of the herein named defendants sometime during and after approximately 1997.

34. Prior to September 1, 1997, Old Monsanto's organization included three divisions: the Agricultural Products Division (or some similar name), the Pharmaceuticals and Nutrition Division (or some similar name) and the Chemical Products Division (or some similar name).

35. Old Monsanto acquired its Nitro plant from Rubber Services Industries sometime in the late 1920's or early 1930's with the intention of supplying rubber chemicals to the tire industry in Akron, Ohio, and elsewhere.

36. Old Monsanto's Nitro plant was primarily a Chemical Products Division plant. But the Nitro plant was also home to one of Old Monsanto's Agricultural Division's products. More particularly, Old Monsanto produced, as aforesaid, a phenoxy herbicide at its Nitro plant known as 2,4,5-T from 1949 through 1971.

37. The workers who manufactured this herbicide referred to it simply as "weed bug". All "weed bug" manufactured by Monsanto was heavily contaminated with the aforesaid dioxins/furans.

a. Old Monsanto's Knowledge Regarding Dioxin.

38. In the late 1940's Old Monsanto's Nitro plant was housed in buildings and sheds constructed by the United States Government in 1917-1918 as part of a nitro-cellulose (gunpowder) plant to produce munitions for World War I.

39. Plant structures were nothing more than a series of open-ended sheds and brick parapet walls scabbed together to provide a roof over the giant cooking pots and other paraphernalia used in the production of basic chemical products.

40. In approximately 1947, Monsanto's Agricultural Division began to produce on an experimental scale a molecule, that in its logically pure form was known as 2,4,5,-trichlorophenoxyacidic acid, or the aforesaid 2,4,5,-T. This molecule exhibited toxicity to plants by causing their root systems to out grow their leaf systems, thus causing the plant to destroy itself through a process of defoliation.

41. In 1949, Old Monsanto's Agricultural Division "started up" its 2,4,5-T manufacturing process at the Nitro plant. At that time and continuing through the early sixties Monsanto produced 2,4,5,-T in a "batch" process at the Nitro plant. This simply meant that batches of the product were cooked (reacted) as opposed to a continuous production stream. Large pots (autoclaves) were loaded with precursor chemicals, which were allowed to react (cook) to form the 2,4,5,-T molecule.

42. In 1949, a reaction in one of the 2,4,5-T autoclaves went out of control. Heat and pressure built and a safety disk blew open, discharging the contents of the vessel to the atmosphere through the roof of building 34. A large cloud drifted over the plant and over the town. 226 plant workers became ill. Some were sent to the University of Cincinnati's Kettering Institute to be examined by Dr. Raymond Suskind. In three confidential reports to Monsanto dated 1949, 1952 and 1953 (copies of the 1949 and 1953 reports are attached as exhibits A and

B), it was reported that the "unknown products of decomposition" liberated from the 2,4,5,-T autoclave caused a systemic intoxication in the workers involving most major organ systems, the endocrine system, the nervous system (both central and peripheral) and further resulted in a systemic acne dubbed "chloracne". The affected workers at the plant referred to the acne simply as "weed bumps".

43. In 1957, two German scientists, Kimmig and Schultz, published the findings of research into the "unknown toxic by-products" of chlorinated benzene processes. They identified the toxin as dioxin, a molecule another German had patented in the 1890's. The technology of gas chromatography permitted the identification of the dioxin molecule and it was determined that it was this toxin that was the culprit in Old Monsanto's Nitro 1949 release.

44. From 1949 until 1971, Old Monsanto's Agricultural Division produced 2,4,5-T on a continuous basis in its trichlorophenol plant in Nitro. Each and every ounce and each and every molecule of this product had associated with it the contaminants, the aforesaid dioxins/furans.

45. In approximately 1964, Old Monsanto began selling 2,4,5,-T to the Armed Services to be used as a part of the herbicide "Agent Orange" for use in Viet Nam. Production of 2,4,5-T continued in a new building. Dioxin/furan content of the product, however, remained unchanged and often increased. Throughout this period Old Monsanto's Agricultural Division, with the advice of Old Monsanto's Medical Director, Emmet Kelly, MD, continued to experience adverse health effects in its workers engaged in the production of 2,4,5-T.

46. The production of dioxin contaminated 2,4,5-T continued 7 days a week 365 days a year from 1949 to approximately 1971 at the Monsanto Nitro plant. During this entire time period, dioxin contaminated dust was released to the atmosphere by Old Monsanto's Agricultural

Division where it was carried by the prevailing winds over the town of Nitro, surrounding communities and the plaintiffs' homes and businesses.

47. In approximately 1972, Old Monsanto dismantled the 2,4,5-T building and buried it, due to its dioxins/furans contamination, on the plant site.

48. In approximately 1983, the United States Environmental Protection Agency documented dioxins/furan contamination at the Nitro plant site as well as dioxins/furans contamination off the plant site. Old Monsanto, on behalf of its Agricultural Division, entered into a consent decree at that time, agreeing to cap the Old Monsanto Nitro property with a 4" layer of "chat" (gravel) to seal the surface of the property against further dioxins/furans escape. Old Monsanto agreed not to disturb the surface thereafter without first employing contamination protective measures.

49. During the time period 1979 through 1984, Old Monsanto commissioned a number of health studies regarding the risks posed by the dioxins/furans contamination at its Nitro plant. In connection with these studies investigators employed by Old Monsanto, including Judith Zak, Raymond Suskind, James Gaffey, and Rebecca Hertzberg, reviewed the entire history of Old Monsanto's experience with the "dioxins/furans" production and contamination problems at Nitro and informed Old Monsanto of their findings.

50. At the present time, New Monsanto is under a consent order with the United States Environmental Protection Agency regarding off site contamination of the Kanawha River and certain orphan dump sites which contain Old Monsanto dioxins/furans.

51. At all times relevant, Old Monsanto and the herein named defendants had actual knowledge of the dioxins/furans contamination problem at Nitro and the surrounding

communities and in the alternative certain of the defendants knew or with the exercise of reasonable care should have known of the aforesaid contamination.

b. Solutia, Inc.

52. Solutia, Inc. (hereafter "Solutia"), was incorporated in April 1997 by Old Monsanto corporate insiders. Solutia is simply the renamed Queeny Chemical Company[1], a subsidiary of Old Monsanto.

53. On or about September 1, 1997, Old Monsanto entered into a Distribution Agreement with Solutia, which transfered the operations, assets and liabilities of Old Monsanto's Chemicals Division to Solutia, a copy of which is attached as exhibit (C).[2]

54. In connection with the aforesaid distribution to Solutia, Old Monsanto distributed on a one to five basis all of the stock of Solutia to Old Monsanto shareholders (the "spinoff").

55. Solutia was created by Old Monsanto insiders as the vessel into which Old Monsanto and the named defendants sought to concentrate their liabilities arising from the environmentally ruinous historical conduct of Old Monsanto at its various Chemicals Division operations throughout the United States, including Nitro, WV.

56. On information and belief, Solutia agreed to assume Old Monsanto's Chemicals Division legacy liability because at the time Solutia was being controlled by former Old Monsanto corporate insiders.

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[1] The Queeny Plant and Old Monsanto had their beginnings simultaneously in 1901. John Francis Queeny and Dr. Louis Veillon launched these enterprises simultaneously, naming Monsanto after John Queeny's wife Olga Monsanto Queeny.

[2] Interestingly, the newly formed Solutia's core business was in the production of nylon and in the production of coatings for safety glass. The company, however, via the distribution agreement, fell heir to over 28 aging and decrepit raw chemical processing and production plants that historically had little or nothing to do with the core business of Solutia.

57. Old Monsanto did not, however, transfer all operations, assets and liabilities to Solutia. The so-called agriculture business was not transferred. The pharmaceutical and nutrition businesses were, likewise, retained by Old Monsanto.

58. As aforesaid, the Nitro plant was part of the chemicals division and was distributed to Solutia. However, the Nitro plant was host to one of Monsanto's Agricultural Division operations involving the manufacture of the agricultural herbicide, 2,4,5,-T. As such, the liabilities arising from the Nitro 2,4,5-T production unit did not transfer to Solutia. Further, pursuant to a "Master Operating Agreement" dated as of January 1, 1995, pertinent parts of which were adopted by Solutia, Solutia never operated the Nitro plant, rather one of the named defendants, Flexsys, as appears below, took control of and operated the plant.

59. Upon information and belief, following a brief six year "effort" by Solutia to operate plants in 18 areas of the United States, Solutia and 14 of its corporate affiliates filed petitions for relief under chapter 11 of title 11, United States Code (the Bankruptcy Code) in the United States Bankruptcy Court for the Southern District of New York. Solutia continues to operate and manage its property as Debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

c. Defendants

Monsanto Company

60. The defendant Monsanto Company (hereinafter New Monsanto), is the successor in interest to the liabilities of Old Monsanto.

61. New Monsanto was incorporated in February 2000 as a subsidiary of the defendant, Pharmacia Corporation ("Pharmacia"), under the name Monsanto Ag Company.

62. On March 31, 2000, New Monsanto changed its name from "Monsanto Ag Company" to "Monsanto Company".

63. On September 1, 2000, Pharmacia transferred the assets and liabilities of its agricultural business to New Monsanto pursuant to the terms of a Separation Agreement.

64. On October 23, 2000, New Monsanto sold 38,033,000 shares of its common stock in an initial public offering at a price of $20 per share. Pharmacia continued to own the remaining shares, representing 85.2% of the outstanding shares.

65. On August 13, 2002, Pharmacia spun off its remaining interest in New Monsanto by distributing its entire ownership of New Monsanto stock to Pharmacia shareholders by means of a tax-free dividend. The stated reasons for the separation of the agricultural business from the other businesses of Pharmacia were that as a separate company, the agricultural business could have a more focused investor base, greater strategic focus and the ability to offer better incentives to employees.

66. Under the terms of the Separation Agreement, New Monsanto agreed to indemnify Pharmacia for any liability it might have for environmental remediation or other environmental responsibilities primarily related to Pharmacia's former agricultural or chemical businesses.

67. The aforesaid Separation Agreement provided that New Monsanto would indemnify Pharmacia for environmental liabilities that Solutia, the former chemicals business of Pharmacia, assumed pursuant to the aforesaid Distribution Agreement, to the extent that Solutia failed to pay, perform or discharge those liabilities.

68. On July 1, 2002, in anticipation of the spinoff of New Monsanto, Phamacia and New Monsanto entered into a First Amendment to the Separation Agreement ("Amendment"). In the amendment, the definition of "Former Agricultural Business" was amended by adding the

following language at the end of Schedule F-1 under the heading "Other Former Businesses": **"34. discontinued herbicides, including, without limitation, 2,4-D (2,4 dichlorophenoxyacetic acid) and 2,4,5-T (2,4,5 trichlorophenoxyacetic acid)"** (emphasis added). The New Monsanto emerged from the tangle of business deals instigated by Old Monsanto, with Old Monsanto's valuable agricultural assets intact, and ostensibly protected from Old Monsanto's Chemicals Division legacy liability.

69. New Monsanto maintains its principal offices in St. Louis, MO, the same corporate park occupied for decades by the Old Monsanto. New Monsanto rarely refers to its former self by the name "Monsanto", choosing instead to refer to legacy issues in the name of the defendant Pharmacia, a company that did not exist prior to March 31, 2000.

Pharmacia Corporation

70. Pharmacia Corporation ("Pharmacia") was originally incorporated under the name Monsanto Company (the successor to a Missouri corporation, Monsanto Chemical Works).

71. On March 31, 2000, MP Sub, Incorporated, a wholly-owned subsidiary of Pharmacia (then named Monsanto Company), merged with and into Pharmacia & Upjohn, Inc. ("P&U") pursuant to the terms of an Agreement and Plan of Merger dated as of December 19, 1999, among the parties (the "Merger Agreement").

72. As a result of the merger, each share of common of common stock of P&U was converted into 1.19 shares of the common stock of Pharmacia, and each share of Series A Convertible Perpetual Preferred Stock of P&U was converted into one share of a new series of convertible preferred stock of Pharmacia designated as Series B Convertible Preferred Stock.

73. As a part of the aforesaid merger, Old Monsanto was renamed Pharmacia Corporation and P&U became a subsidiary of Pharmacia.

74. After the merger, the agricultural operations of Pharmacia were transferred to New Monsanto.

75. On July 13, 2002, Pfizer Inc. ("Pfizer") entered into an Agreement and Plan of Merger (the "Merger Agreement") with Pharmacia and Pilsner Acquisition Sub Corp., a direct wholly-owned subsidiary of Pfizer (the "Merger Sub").

76. The aforesaid merger was completed on July 16, 2003, at which time the Merger Sub was merged with and into Pharmacia, and Pharmacia survived the merger as a wholly-owned subsidiary of Pfizer.

77. Each Pharmacia shareholder received 1.4 shares of Pfizer stock for each share of Pharmacia stock, and each share of Pharmacia's Series C convertible perpetual preferred stock was exchanged for one share of Pfizer Series A convertible perpetual preferred stock.

78. The total estimated purchase price paid by Pfizer was $56 billion.

79. A condition precedent to Pfizer paying the purchase price was that Pharmacia had to cause one of the following to occur: (i) a spin-off of New Monsanto, (ii) the sale of all or substantially all of the assets of New Monsanto followed by the liquidation and dissolution of New Monsanto, or (iii) the sale of all of Pharmacia's equity interest in Monsanto.

80. Pharmacia is a Delaware corporation with principal offices in St. Louis, MO.

81. At all relevant times, Pharmacia and its subsidiaries, owned, occupied, and otherwise controlled the aforesaid contaminated Nitro plant.

82. Further at all relevant times, Pharmacia was and is a successor to the liabilities of Old Monsanto and Pharmacia has and continues to aid and abet Monsanto in the contamination of the communities surrounding the Nitro plant.

Akzo Nobel Chemicals, Inc., Akzo Nobel Services, Inc, Akzo Chemicals, Inc.

83. The defendants, Akzo Nobel Chemicals, Inc., Akzo Nobel Services, Inc., and Akzo Chemicals, Inc. are Delaware corporations, and each of these defendants maintains its principal place of business in the State of Illinois (hereafter, collectively, "Akzo").

84. The defendants, "Akzo", collectively, are subsidiaries of Akzo Nobel, NV, a foreign corporation, headquartered in the Netherlands. Akzo Nobel, NV, is active in three business areas: pharma, coatings and chemicals.

85. Through a series of complex corporate permutations, Akzo Nobel, NV created the defendants, Akzo, as U.S. subsidiaries for the purpose of carrying out certain business plans with the defendants, as more particularly appears below.

86. The defendants, Akzo, are licensed to do business in West Virginia and at all relevant times were and are doing business in West Virginia, including doing business at the aforesaid Nitro plant site.

Flexsys America Co., Flexsys America, L.P., Flexsys International, L.P., and Flexsys International, Co.

87. The defendants, Flexsys America Co, Flexsys America, L.P., Flexsys International, L.P. and Flexsys International, Co., are Delaware corporations (collectively "Flexsys").

88. Each of these defendants maintains its principal place of business in the State of Ohio and at all times relevant each of the defendants, Flexsys, were licensed to do business in the State of West Virginia and were doing business in the State of West Virginia.

89. The defendants, Flexsys, are and were created by Flexsys NV, an incorporated joint venture existing under and by virtue of the laws of Belgium, formed in 1995 between the aforesaid Akzo Nobel NV and Old Monsanto, and maintaining a principal place of business in Woluwe, Belgium.

90. The defendants, Flexsys, were formed for the purpose of carrying out various complex business ventures with the other defendants as more particularly appears below.

91. At relevant times, the defendants, Flexsys, were in joint ventures with Old Monsanto and at relevant times were in joint ventures with the other defendants, including Pharmacia and New Monsanto, for the purpose, but not limited thereto, of operating and controlling the Old Monsanto Nitro plant near Nitro, WV.

92. To carry out the aforesaid joint venture, Akzo and Old Monsanto entered into a "Master Operating Agreement" and certain amendments thereto as of January 1, 1995. Under this agreement, Old Monsanto, Akzo, or Flexsys is the "operator" or the "guest" at certain operating sites, including Nitro. At sites at which one party is an "operator" the reciprocal party is a "guest", and vice versa. The Master Operating Agreement provided that Flexsys was to be the operator of the Nitro plant providing services to Solutia, as guest, at Nitro.

93. At various and relevant times Flexsys owned, operated or had control of the Nitro, WV, plant site. During these times the defendants, Flexsys and Akzo knew and had reason to know of the aforesaid dangerous dioxin contamination existing at the Nitro plant site and further knew or had reason to know that dioxin contamination was leaving the plant site causing the communities in the surrounding area to become contaminated with dioxin and other related toxins.

94. At all relevant times the defendants Akzo and Flexsys had control of, operated, and otherwise had responsibility for Old Monsanto's Nitro Plant. At all such times, these defendants knew, should have known, and were in a position to know of the risks of contamination and off site contamination presented by the dioxin/furan contaminated environment of the Nitro Plant site. Because of this relationship, the Akzo defendants and the Flexsys defendants are successors

to the liability of Old Monsanto for off site dioxin/furan contamination with reference to the Nitro site and these defendants are jointly and severely liable with the other defendants.

95. At all times relevant, the defendants were, and currently are, doing business in the State of West Virginia, at, by and through their chemical plant located on Plant Road, Nitro, West Virginia.

Jurisdiction

96. The Circuit Court of Putnam County has jurisdiction to decide this lawsuit. The complained of events originated with the defendants' plant site, the aforesaid "Monsanto Plant", near Nitro, Putnam County, West Virginia.

97. Certain of the representative plaintiffs reside in Putnam County, WV and certain of the contaminated communities are located in Putnam County, WV. Further, significant numbers of the putative class members are residents of Putnam County, WV, and a significant portion of the contaminated real property is located in Putnam, County, WV.

98. Representative plaintiffs who are residents of Kanawha County, WV, have been directly injured and damaged as a direct consequence of the aforesaid dioxins/furans leaving the Nitro Plant, crossing the Putnam County/Kanawha County line and entering the homes and property of the Kanawha County resident plaintiffs. Further, the putative class members who reside in and own contaminated property in Kanawha County and who have been exposed in Kanawha County have all been directly exposed and contaminated by the aforesaid dioxins/furans emanating from the defendants' Nitro Plant site.

GENERAL CLASS ALLEGATIONS

99. As more particularly stated below, plaintiffs seek class certification under Rule 23 of the West Virginia Rules of Civil Procedure.

100. The representative plaintiffs, on information and belief, and as more fully pleaded below, allege that class certification is appropriate under the claims of this complaint inasmuch as all four prerequisites contained in Rule 23(a) – numerosity, commonality, typicality, and adequacy of representation –are presented and met by the claims herein made. The representative plaintiffs further allege that the herein proposed class action meets one or more of the three subdivisions of Rule 23(b).

A. Summary of Facts Pertinent To Class Certification.

101. The persons plaintiffs seek to represent and who make up the putative class and sub-classes thereof, as set forth above, reside in and own, possess, or control real estate and improvements thereon located in Kanawha and Putnam Counties, WV.; they are residents and former residents of a number of communities, some incorporated, others not, that are located in the vicinity of the aforesaid plant site near Nitro, Putnam County, WV; they were and are employed by various employers in the aforesaid communities; and, they are and were former students in the several public schools located in the aforesaid areas.

102. Specifically, the Monsanto Plant is located near the eastern boundary of Putnam County and the western boundary of Kanawha County, West Virginia, on the banks of the Kanawha River at Latitude 38.25.846/ Longitude 81.50.243 degrees. This location is less than one fourth mile from the city limits of Nitro, West Virginia. The town of Nitro is divided by the Kanawha/Putnam County line, and the plant is located in Putnam County within one half mile of the Kanawha County line, but outside the corporate limits of Nitro.

103. The Monsanto Plant's western boundary is the Kanawha River where the defendants have, during the operative time period, maintained barge docks for the off loading and shipping of chemicals. The river, at this point, flows through a narrow, flat valley floor or

"river bottom" known as the Kanawha Valley. Several of the contaminated communities at issue here are located on this river bottom, including Rock Branch, Armour Creek, Nitro, Amandaville, Institute, and St. Albans, as well as number of less well defined communities. The population of these communities exceeds a combined total of 25,000 persons. Residential houses and commercial buildings number in excess of 8,000.

104. The Kanawha River is a northward flowing river with a general direction of WNW. Prevailing winds tend to blow out of the SW "up stream" along the river bottom. Due to the topography of the area a number of narrow valleys and "hollows" lead away from the river bottom, causing low altitude prevailing winds to funnel along these natural pathways. Residential housing is located all along these natural routes which also provide for convenient road building. The communities located in and along these "hollows" have been, like the river bottom communities, adversely affected by the herein complained of contamination and the conditions created thereby.

105. For purposes of identifying the plaintiffs at risk for contamination, the plant site, due to prevailing winds and natural topography, is located at the center of a wind and topographically defined arc within which the deposition of contaminated dust and fumes escaping at all relevant times from the plant property fell upon and otherwise entered and contaminated plaintiffs' real estate. The putative class members and their communities are located within this arc.

106. Each of the putative class members, including any sub-classes thereof, has experienced the same threshold wrongful invasion of their property rights and/or personal rights, to-wit: contamination of their property and/or person by defendants' dioxins/furans. Importantly, each of the putative class members, and the members of any sub-classes thereof,

complain of contamination by the same class of toxic molecules as every other member of the putative class.

107. Defendant's operation of the 2, 4, 5-T process and other related processes from approximately 1949 to 1971 caused the neighborhoods in the vicinity of the plant to become contaminated with the aforesaid dioxins/furans during that time period. Each of the putative class members as well as the representative plaintiffs had their property contaminated in the same manner by the defendants.

108. As a consequence of the operation of the 2, 4, 5-T process, the plant site and adjacent real estate became heavily contaminated with dioxins/furans.

109. Since 1971 when the 2, 4, 5-T operation ceased and continuing to the present, wind blown dioxin contaminated dust has on a continuous basis escaped from the surface of the plant site causing dangerous accumulations of the aforesaid dioxins/furans to build up on the plaintiffs' real estate and in the plaintiffs' homes. Based on serum lipid testing of certain putative class members and certain members of sub-classes thereof, the defendants' dioxins/furans are and have been building up in the bodies of the class members as well.

B. Plaintiffs' Testing Results In Support of Class Certification.

110. During the period May 21, 2004, through May 25, 2004, contractors retained by the plaintiffs collected indoor dust samples at various residential properties throughout the town of Nitro in order to analyze them for Dioxin/Furan contamination.

111. Analytical testing of the samples was performed by AXYS Analytical Services of Sidney, British Columbia, Canada. On August 10, 2004, AXYS reported their analytical results. Review of this report reveals that dioxin/furans are present at measurable levels in all houses tested. The analytical results indicate concentrations of 2,3,7,8-TCDD ranging from 16.4 to

1,210 pg/g(pico grams per gram, or parts per trillion (ppt)). The total dioxins/furans concentrations ranged from 1,910 to 115,000 parts per trillion.

112. Currently, there are no regulatory standards or guidance for indoor dust contaminated with dioxins/furans. However, the US EPA Region 3 Risk Based Carcinogenic Concentration Guideline for 2,3,7,8-TCDD in residential soil is 4.3 ppt. Under the West Virginia Department of Environmental Protection under Title 60 Legislative Rule (Voluntary Remediation and Redevelopment Rule), the cleanup standard for residential soils is 3.9 ppt. The indoor dust concentrations found in the test houses exceed both these outside soil standards by a substantial margin.

113. These empirical data indicate that substantial portions of the communities in the vicinity of the plant are in fact contaminated. Further, reasonable inferences drawn from these data establish that the ground in these communities is also contaminated with dioxin, dibenzo furans and other toxins created as a consequence of the chlorinated phenol process at the defendant's Nitro plant.

114. Biological testing of certain putative class members reveals that the general population of the aforesaid communities is at significant risk for elevated body burden levels of the aforesaid dioxins/furans.

115. Serum lipid levels among those tested revealed 2,3,7,8 TCDD levels ranging from 5.5 ppt to 239 ppt. Toxic Equivalent levels (TEQs) ranged from 35 to over 300 parts per trillion.

116. The World Health Organization and U.S. Centers for Disease Control and Prevention have concluded as of January, 2003, that the body burden of dioxins/furans in the general population are now below the level of detection.

SPECIFIC RULE 23 CLASS ACTION ALLEGATIONS

A. Rule 23(a) Allegations.

1. Numerosity.

117. The putative class, as alleged above in paragraph _, numbering in excess of 25,000 current and former residents and property owners of the class affected area, is so numerous that joinder of all members is impracticable.

2. Commonality.

118. Rule 23(a)(2) of the West Virginia Rules of Civil Procedure provides that "commonality" is satisfied upon a showing that there are questions of law or fact common to the class. *In Re Rezulin Litigation v. Hutchinson, 214 W.Va. 52, 585 S.E2d 52 (2003).*

119. The claims of the putative class as well as the class representatives, as shown above, all arise from the same set of conditions created by the defendants from 1949 to the present at the Old Monsanto plant site located near Nitro, Putnam County, WV. The mechanism of exposure and contamination is common to all persons in the class affected area.

120. Each member of the putative class was, and is being, exposed to the same toxins. As a consequence of the juxtaposition of the putative class members to the contamination caused by the defendants, each of the class members is now at an increased risk of developing one or more of a discernable set of diseases epidemiologically, clinically, and observationally linked to the contaminants generated by the defendants' at the Old Monsanto plaint near Nitro.

121. The defendants were under a legal duty to use their Nitro property in such a way as to not unreasonably interfere with the rights of the plaintiffs and the putative class members to enjoy their property. Beginning in 1949 the defendants breached this duty to the plaintiffs and

caused abnormally dangerous substances to escape the defendants' Nitro property. As more particularly plead below, the class members were all injured as a consequence of the same breach of duty the defendants owed to each class member as a matter of law.

3. Typicality.

122. As shown above, plaintiffs here allege questions of law or fact common to the class and the claims of the representative parties. Further, the claims of the plaintiffs are typical of the claims of the putative class. The real estate owned by the putative class members was all contaminated in the same way, during the same time period, and this condition presents the same type of property damage as to each potential class member. Further, the risk of serious harm, injury, and disease to each of the class members was created in the same way, by the same defendants during the same time period and the risk is typical of each class member. Further, the same type of toxic molecules threatens each of the putative class members and subjects each to the enhanced risk of the same injuries and disease processes. For example, the most recent biomonitoring data reported by the Center for Disease Control, based and based on a 1998 WHO (World Health Organization) Consultation concluded that current human body levels of 2,3,7,8-TCDD have dropped to non-detectable levels in most of the general population. At a detection level of 4.8 ppt, 95% of the sampled population had non-detectable levels of dioxin in their blood. This data provides a uniform standard against which to measure the risk elevated blood dioxin levels in the putative class present.

123. A representative party's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. These claims are not required to be identical. *In Re Resulin Litigation v. Hutchison, supra, at Sylb. Pt. 12*

4. Adequacy of representation.

124. The representative parties and their properties are, and in the past have been located, within the plume of contamination emanating from the Nitro plant site, and therefore share the same risk as the putative class members. The representative plaintiffs must necessarily protect the interests of the class as they seek to protect themselves; the plaintiffs, because of their shared interests with the putative class, are adequate to represent the interests of the class and any sub-classes.

125. The law firms seeking to represent the putative class possess the financial resources and possess the requisite experience to vigorously represent the class and any subclass in this litigation. Lead counsel for the Calwell Practice, PLLC, Stuart Calwell, a member of the West Virginia State and New York State Bars, has extensive experience litigating dioxin cases against the defendant Monsanto, including serving as lead trial counsel in an 11 month jury trial in the United States District Court for the Southern District of West Virginia, at Charleston, during 1984 and 1985. Currently The Calwell Practice, PLLC, and Stuart Calwell serve on the national plaintiffs' litigation committee, seeking compensation through litigation against Monsanto and others for Viet Nam Veterans injured by dioxin as a consequence of their exposure to Agent Orange, some of which was manufactured in Nitro, WV, by the defendant Monsanto. Further, The Calwell Practice, PLLC is currently serving on the National Steering Committee for the plaintiffs in *In re:* ***PREMPRO PRODUCTS LIABILITY LITIGATION*** *MDL Docket No. 4:o3CV1507 WRW,* presently pending in the United States District Court For The Eastern District of Arkansas, Western Division. Additionally, both law firms, the Calwell Practice, PLLC and The Law Offices of James F. Humphreys and Associates have extensive experience in litigating mass torts. Each firm litigates cases in numerous other states. John M. Mason of the

Law Offices of James F. Humphreys, has served as class counsel for the proposed class of state residents/owners of automobiles made by General Motors, DaimlerChrysler, and Ford, equipped with uncrashworthy front seatbacks, in actions seeking retrofit, repair, or replacement, in Maryland, New Jersey, Pennsylvania, New York, and New Hampshire state courts. Additionally, he has served as co-counsel for state court fen-phen personal injury and medical monitoring claimants, as objecting intervenors, in fen-phen MDL proceedings (EDPA) considering and rejecting a "limited fund" class action settlement proposed by Interneuron Pharmaceuticals, Inc. Mr. Mason has served as plaintiffs' class co-counsel, in American Home Pharmaceuticals, Inc. (Wyeth) settlement approved and implemented by EDPA. Mr. Mason has also served as a member, Pennsylvania state court plaintiffs' steering committees, for (i) fen-phen personal injury and medical monitoring litigation consolidated in Philadelphia County Court of Common Pleas; (ii) Ford/Firestone litigation, Pennsylvania consumer fraud class action in Phila. Cty. Ct. Com. Pl.; and (iii) Cooper Tire litigation, Pennsylvania consumer fraud class action in Phila. Cty. Ct. Com. Pl.

The Calwell Practice, PLLC maintains offices in New York City at 90 Broad Street, 19th floor, in addition to its Charleston and Morgantown West Virginia offices. The Law Offices of James F. Humphreys maintains offices in Washington, D.C., at 1200 New Hampshire Avenue, N.W., 20036, as well as maintaining offices in Charleston, WV. From these offices the respective firms serve the needs of their national litigation.

B. Rule 23(b)(1)(A) Allegations.

126. 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 defendants opposing the class.

127. As shown above, the sheer number of putative class members, should their claims be litigated separately, will with certainty result, over time, in inconsistent judgments.

128. Inasmuch as this lawsuit addresses over 50 years of misconduct by the defendants, it is important that the litigation result in clear standards of conduct for other corporations who are or would seek to conduct business within the jurisdiction of Putnam County, WV.

C. Rule 23 (b)(2) Allegations.

129. The representative plaintiffs, on behalf of the putative class members, seek equitable relief from the defendants in order to stop future contamination of plaintiffs' property with dioxin and other toxins migrating from the defendants' Nitro plant site. The injunctive relief sought is permanent and final in nature as more fully appears below.

130. As clearly set forth above, the defendants have engaged in a course of conduct since 1949 which essentially guarantees continued contamination of plaintiffs' property, as well as the property of the putative class members with dioxin and other related toxins due to wind erosion from the Nitro plant site.

131. Further, plaintiffs are seeking to establish a medical monitoring class pursuant to the holding in *Bower v. Westinghouse Electric Corp., 206 W.Va. 133, 522 S.E.2d 424 (1999).* The plaintiffs seek to recover the costs of medical monitoring necessary to determine whether the plaintiffs have sustained or will develop in the future, any injuries from their exposure to the aforesaid toxins. These costs are sought on behalf of the representative plaintiffs as well as the putative class members.

132. Under Rule 23(b)(2) of the West Virginia Rules of Civil Procedure (1998), after liability has been established, the court may exercise its equitable powers to establish and administer a court-supervised medical monitoring program to oversee and direct medical surveillance, and provide for medical examinations and testing of members of a class.

133. As more particularly appears in below, the plaintiffs seek on behalf of themselves and others a court supervised fund for purposes of medical monitoring.

D. Rule 23(b)(3) Allegations.

134. While none but a theoretical "class action" is populated with members of clone-like similarity, the instant case, because of the sheer numbers of putative class members experiencing the same contamination and because the same defendants are responsible for the contamination of the affected communities, issues of fact and law common to the class members predominate over the individual issues attendant to each class member. No individual class member, given the complexity and expense of proving the necessary elements of this civil action, can express a credible argument in favor of individual prosecution over the device of Rule 23. Currently, there is no litigation pending regarding the deposition of wind borne dioxin laden dust on the buildings, property and person of the residents of the Class Affected Area. Because the same defendants acting jointly, severely and in concert during the operative time period are responsible for the environmental mess and human health tragedy that now is the profile of the affected communities, justice requires that the litigation be concentrated in this civil action to allow for the marshalling of money and manpower necessary to effectively litigate the case on behalf of the affected population. By concentrating the many common issues of scientific and technical proof, the common issues of fact regarding the defendants' conduct in causing substantial portions of the aforesaid communities to be contaminated, and the many common

issues of fact regarding the toxicity of the molecules in question, in a single Rule 23 action, the court will be afforded an efficient and cost effective strategy to manage the numerous class members being represented in this civil action.

a. The litigation history of dioxin based claims, to-wit: In Re Agent Orange Litigation and Boggess v. Monsanto, has been underscored by a defense litigation strategy of collateral attacks on the reputations of the experts employed by the plaintiffs, stonewalling discovery tactics and a strategy of using the rules to effect delay all for the ulterior purpose of breaking the financial back of any individual plaintiff with the temerity to pursue a civil action such as this. Such a defense strategy is premised on the tactic of winning the litigation by attrition rather than defending on the merits of plaintiffs' claims. In the face of a well financed corporate litigation team employing such tactics, litigation of individual claims would become a practical impossibility. Rule 23 provides the only effective and efficient tool for the court to provide a fair forum for the litigation of plaintiffs' claims.

135. Monsanto and the other defendants, over the course of approximately fifty-five years, indiscriminately contaminated the plaintiffs' and putative class members' property, making no allowances for individual differences among the class members in this toxic undertaking. The defendants injured and contaminated the plaintiffs and their property as a group. In this conduct, the defendants' only criteria were that the individual putative class member be located under the aforesaid plume of toxins. Defendants' misconduct was broad, and it was carried out in a manner heedless of any peculiarities of the individual residents of the affected areas. Plaintiffs now, having been injured as a group, should be permitted, in consideration of simple justice and fair play, to, as a group, through class representatives,

prosecute the defendants in this single Rule 23 action. The Plaintiffs, therefore, bring this case on behalf of themselves and others similarly situated.

Class Definition.

136. The class is made up of all persons who have had their person and/or property contaminated with the aforesaid dioxins/furans.

137. The putative class of all such persons is divided into two natural sub-classes: (1) The Property Owners Class, which is made up of current real property owners, including leasehold interests, whose property is contaminated with the aforesaid dioxins/furans; and, (2) The Medical Monitoring Class, which is divided into three sub-classes: (a) all persons presently residing or who in the past resided in the area of contamination (hereinafter Class Affected Area) for at least one year during the period March 1949 to the present and whose serum lipid dioxins/furans levels are above the level of detection; and (b) all persons who currently are or who in the past have been employed by employers in the Class Affected Area for five years or more during the period March 1949 to the present and whose serum lipid dioxins/furans levels are above the level of detection; and (c) all persons who currently are or who have in the past attended public schools in the Class Affected Area during the period March 1949 to the present and whose serum lipid dioxins/furans levels are above the level of detection.

138. The Class Affected Area is the area within a range of a five mile radius from the location of the Old Monsanto chemical plant, Putnam County, WV.

139. Excluded from this class are: (1) the defendants and their respective officers, directors, and managerial employees, if any; (2) all attorneys and their staffs involved in this litigation; and (3) the presiding judicial officer and the presiding judicial officer's staff.

140. The representative plaintiffs are identified in paragraphs 24 through 32 above.

WHEREFORE, plaintiffs, after a reasonable but expedited class discovery period, pray that this Court certify a class as above plead, name plaintiffs' counsel herein as class counsel, and proceed to the merits of this important civil action on the basis of Rule 23 of the West Virginia Rules of Civil Procedure.

ALLEGATIONS AND CAUSES OF ACTION AS TO THE MERITS

GENERAL ALLEGATIONS OF FACT

141. The town of Nitro was built, as were the Nitro plant buildings, during 1917-1918. Bungalows, store buildings, schools and other buildings were constructed all as a part of a government reservation to house munitions plant employees and their families. When the government moved out and the chemical plants moved in the town became populated with chemical plant workers and their families. Many of the original World War I buildings and houses still exist and are still occupied by plaintiffs and the class members.

142. Additionally, over the years new houses were built and the population of the river bottom towns of Nitro and Saint Albans grew.

143. During the years that Monsanto was operating its trichlorophenol plant and releasing dioxin laded dust into the atmosphere, the aforesaid houses and buildings were circulating this dioxin laden dust through their attics and crawl spaces, where the dust was deposited and remained, filtering down through the interior of the buildings to be encountered by the plaintiffs.

144. In 1983, the United States Environmental Protection Agency tested Monsanto's plant site for the presence of dioxin. Certain off site sampling were performed as well. Most of the samples obtained from the sampling grid were positive for dioxin, both on the plant site and at off site locations.

145. Plaintiffs' independent sampling of selected homes, as aforesaid, reveals levels of 2,3,7,8 TCDD in attic dust that exceed 2200 parts per trillion. EPA clean-up standards for 2,3,7,8 TCDD contaminated dirt require a level less than 4 parts per trillion. Further, as aforesaid, plaintiffs' biological testing of certain putative class members reveals serum lipid levels of 2,3,7,8 TCDD well above the level of detection and therefore well above levels of dioxins/furans in the general population.

146. The empirical data, to a reasonable probability, support the conclusion that Nitro town and the surrounding communities are contaminated with dioxin generated by the Monsanto plant trichlorophenol process during the period 1949 through 1971.

147. The Monsanto plant site remains contaminated today and continues to present the risk of off site migration of dioxin contaminated dust as well as dioxin contaminated surface water runoff.

NUISANCE:

INVASION OF AND DAMAGE

TO PROPERTY INTERESTS

148. Private nuisance is solely a matter of tort liability. The interest in the private use and enjoyment of land may be invaded by more than one type of conduct. The invasion may be

intentional and unreasonable. It may be unintentional but caused by negligent or reckless conduct; or it may result from an abnormally dangerous activity for which there is strict liability. On any of these bases the defendants may be liable. *Restatement 2d of Torts section 822 comment a (1979).*

149. The class of Property Owner Plaintiffs at all relevant times enjoyed a legally protected interest in the private use and enjoyment of their property. Included within this interest of private use and enjoyment is the interest in enjoying their property and its appreciation in economic value without dioxin contamination and without the risk of developing serious injury or disease as a consequence of being exposed to dioxin contamination. At all times relevant, the defendants invaded Propertied Plaintiffs' legally protected property interests by causing Propertied Plaintiffs' property to become contaminated with the aforesaid dioxins/furans thus destroying the value of the Propertied Plaintiffs' property and thus exposing the Propertied Plaintiffs to a great risk of injury and disease because of the aforesaid dioxins/furans exposure.

A. Intentional Nuisance – Strict Liability.

150. Plaintiffs incorporate by reference paragraphs all foregoing paragraphs the same as though each were fully set forth herein verbatim in the first instance.

151. Since 1949 the defendants by virtue of the actions of Old Monsanto Company and its successor, The Monsanto Company, and the other defendants by virtue of their actions, jointly, severally and as successors to the liability of Old Monsanto Company, created and maintained a nuisance on the property known as the "Monsanto Plant", to-wit: the defendants through their manufacturing processes caused to be created the aforesaid dioxins/furans.

152. The aforesaid dioxins/furans escaped from the defendants' property to the lands and property of the representative Propertied Plaintiffs and to the lands of the putative class of Propertied Plaintiffs. Propertied Plaintiffs allege that the defendants intended to cause the formation of these dioxins and, further, Propertied Plaintiffs allege that the defendants intended the dioxins to escape to the lands of the representative Propertied Plaintiffs and to the lands of the putative class of Propertied Plaintiffs.

153. Because the defendants knew or should have known that their conduct in producing the aforesaid dioxins/furans and causing them to escape the Nitro Plant site was causing a substantial and unreasonable interference with the Propertied Plaintiffs' interests in the use and safe enjoyment of their respective real estate, the defendants' conduct in so doing was and is intentional and unreasonable within the meaning of *Hendricks v. Stalnaker, 380 S.E.2d 198,202 (W.Va. 1989),* and as such, constitutes an intentional and actionable nuisance.

154. Because the gravity of the harm to the Propertied Plaintiffs and the putative class members presented by the aforesaid dioxins/furans outweighs the social value of the defendants' activity in their past production of 2,4,5-T and in their present maintaining of a dioxins/furans contaminated plant site, the defendants' contamination of plaintiffs' property with dioxins/furans is unreasonable.

155. Because the defendants' conduct in interfering with plaintiffs' property interests was and is intentional and unreasonable, the defendants and each of them are strictly liable to the Propertied Plaintiffs and to the putative class members they represent, for the harm and damages proximately caused thereby.

156. As a direct and proximate cause of the defendants' invasion of the plaintiffs' property with dioxins/furans the plaintiffs' interest in their respective real estate has been injured in the following but not limited to the following ways:

157. The Propertied Plaintiffs and the members of the putative class of propertied persons they represent have suffered diminution in property value due to the dioxins/furans contamination; and,

158. Have incurred and will incur cleanup costs associated with the decontamination of their respective properties.

159. The plaintiffs and the members of the putative class as a consequence of the dioxins/furans contamination of their property are at a substantially increased risk over that of the general population for the development of a number of serious adverse health conditions which are more particularly set forth below.

WHEREFORE, the Propertied Plaintiffs on behalf of themselves and others similarly situated, demand judgment of and from the defendants and each of them in an amount and manner hereinafter prayed for to compensate them for all losses of property value and for all expenses and for the intrinsic value of losing their houses which are also homes.

B. Unintentional and Otherwise Actionable Nuisance.

160. Plaintiffs incorporate all allegations and preceding paragraphs the same as though fully set forth herein in the first instance.

161. **IN THE ALTERNATIVE,** defendants' conduct in producing the aforesaid dioxins/furans and causing them to contaminate the property of the Propertied Plaintiffs and the property of the members of the putative class was **unintentional** and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

162. Defendants' conduct in invading the property interests of the Propertied Plaintiffs with the aforesaid dioxin/furans was negligent and reckless and as such constituted an actionable nuisance, subjecting defendants to liability for any harm proximately caused by defendants' unlawful invasion of plaintiffs' property and the property of the putative class members the Propertied Plaintiffs represent.

163. Additionally, and in the alternative to plaintiffs' allegations that defendants' were negligent and reckless, plaintiffs allege dioxins/furans are an abnormally dangerous instrumentality and the production of dioxin is an abnormally dangerous activity within the meaning of *Rylands v. Fletcher L.R. 3 H.L. 330 (1868)* as cited in *Peneschi v. National Steel Corp., 295 S.E.2d 1 (W.Va. 1982).*[3]

164. Plaintiffs further allege that the aforesaid dioxins/furans contamination of the Old Monsanto Nitro Plant site is an abnormally dangerous condition.

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[3] Elements of abnormally dangerous instrumentality or condition:
a. existence of high degree of risk of some harm to the person, land, or chattels of another;
b. likelihood that the harm that results will be great;
c. inability to eliminate the risk by exercise of reasonable care;
d. extent to which activity is not a matter of common usage;
e. inappropriateness of the activity to the place where it is carried out;
f. extent to which its value to the community is outweighed by its dangerous attributes.

165. The defendants for their own purposes and economic profit chose to create, handle and maintain the aforesaid dioxins/furans on their Nitro plant site premises. In so doing, the defendants released into the air "poisonous dust" which, as a matter of law, constitutes an abnormally dangerous activity.

166. Because the defendants created an abnormally dangerous condition and because the defendants engaged in an abnormally dangerous activity, the defendants are strictly liable to the Propertied Plaintiffs for any harm and injury proximately caused by the abnormally dangerous dioxins/furans.

167. As a direct and proximate consequence of the defendants and each of them maintaining and creating an abnormally dangerous condition and instrumentality on the aforesaid Nitro plant site, the Propertied Plaintiffs and the members of the putative class they represent have been injured and damaged, suffering loss of property and the plaintiffs have further been subjected to a great increase in the risk of developing serious diseases as more fully appears in plaintiffs' medical monitoring claims in Count _ below.

WHEREFORE, plaintiffs demand judgment against the defendants and each of them for the injury and damages hereinafter set forth caused by the defendants' aforesaid abnormally dangerous activities in an amount and manner more particularly set forth below.

C. Equitable Relief For Actionable Nuisance

168. Plaintiffs incorporate all preceding paragraphs and allegations.

169. Defendants, at the present time, are engaged in tearing down the Nitro plant site. This activity is causing the escape of dioxin laden dust from the site to the surrounding communities further enhancing the risk of harm to the citizens of these communities.

170. The risk of harm is irreparable and plaintiffs have no adequate remedy at law in the face of defendants' willful contamination of these communities.

171. Because dioxin continues to escape from the Nitro plant site, plaintiffs seek equitable relief in the form of an injunction to enjoin any further release of dioxin contaminated dust from the premises.

WHEREFORE, plaintiffs pray for the issuance of a permanent injunction, enjoining the defendants from further activity at the Nitro plant site until and unless the dioxin contamination is first abated.

ACTIONABLE TRESPASS

172. At common law, any act which directly brought foreign matter, whether a human being, an animate or inanimate chattel, or a structure, upon land in the possession of another was redressible in an action of trespass quare clausum fregit. The direct causal relation between the conduct of the actor and the intrusion of the foreign matter upon the possessor's land was sufficient to create a trespass.

173. One who recklessly or negligently, or as a result of an abnormally dangerous activity, enters land in the possession of another or causes a thing or third person so to enter is subject to liability to the possessor if, but only if, his presence or the presence of the thing or the third person upon the land causes harm to the land, to the possessor, or to a thing or a third

person in whose security the possessor has a legally protected interest. *Restatement (Second) of Torts section 165 (1965).*

174. In furtherance of their business interests, Old Monsanto and its successors, the defendants, caused the aforesaid dioxins/furans to be produced as by-products of the 2,4,5-T process at the aforesaid Nitro plant.

175. The defendants at relevant times recklessly or negligently, or as a result of the abnormally dangerous activity of producing dioxins at the Nitro Plant site, caused the property of the Propertied Plaintiffs to be invaded by aforesaid dioxins/furans, causing great and substantial harms to persons, land and chattels of the Propertied Plaintiffs and the members of the putative class they represent.

176. As a direct and proximate result of the defendants' trespass, as aforesaid, the plaintiffs and the members of the putative class have been harmed and injured as aforesaid in their person and property.

WHEREFORE the plaintiffs pray for damages in an amount hereinafter set forth and further, plaintiffs pray for equitable relief from the continued migration of dioxin from the Nitro Plant site to the lands and properties of the plaintiffs all as aforesaid.

RYLANDS V. FLETCHER **– STRICT LIABILITY**

177. Plaintiffs incorporate by reference each and every allegation and paragraph in the foregoing and adopt them as though fully set forth herein in the first instance.

178. Although the Propertied Plaintiffs' *Rylands* style strict liability claims may be subsumed within the nuisance allegations, all representative plaintiffs allege on behalf of all classes of putative class members that irrespective of nuisance, the defendants' operations at the Nitro Plant site were abnormally dangerous within the meaning of *Peneschi v. National Steel Corp, 295 S.E.2d 1 (W.Va. 1982),* which adopted the *Restatement (Second) of Torts 519 and 520 (1976)*[4] definition of "abnormally dangerous", later confirmed in *Bowers v. Wurzburg, 528 S.E.2d 475 (W.Va. 1999).*

179. Dioxins/furans are abnormally dangerous.

180. The production of dioxins/ furans is an abnormally dangerous activity.

181. Maintaining property contaminated with dioxins/furans is an abnormally dangerous activity.

182. The defendants in choosing to use, produce, maintain and otherwise create dioxins at the Nitro Plant site chose to create an abnormally dangerous instrumentality (dioxin) and are strictly liable without a showing of negligence for any injury proximately caused the plaintiffs and the members of the putative class by that instrumentality (dioxins/furans).

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[4] 519. GENERAL PRINCIPLE
(1) One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm.
(2) this strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous.
520. ABNORMALLY DANGEROUS ACTIVITIES
In determining whether an activity is abnormally dangerous, the following factors are to be considered:
(a) existence of a high degree of risk of some harm to the person, land or chattels of others;
(b) likelihood that the harm that results from it will be great;
(c) inability to eliminate the risk by the exercise of reasonable care;
(d) extent to which the activity is not a matter of common usage;
(e) inappropriateness of the activity to the place where it is carried on; and
(f) extent to which its value to the community is outweighed by its dangerous attributes.

183. As a direct and proximate result of the defendants activities as aforesaid, but not limited thereto, poisonous and toxic dust has invaded the property and person of the plaintiffs and each of them and plaintiffs have, therefore been damaged and injured in their person and property as set forth above and more particularly stated below.

WHEREFORE the plaintiffs demand judgment of and from the defendants and each of them in an amount hereinafter prayed for.

MEDICAL MONITORING

184. The plaintiffs incorporate each and every paragraph and allegation in the foregoing Counts the same as though each were fully set forth verbatim herein in the first instance.

185. Sampling data establishes that the communities surrounding the Nitro Plant site are highly contaminated with dioxin. Sampling of the interior of thirteen homes in the area yielded dioxin levels several thousand times higher than United States EPA standards for dioxin levels in residential dirt.

186. Current exposure levels for the general population to dioxin is at or below the detection limit of 4 parts per trillion 2,3,7,8 TCDD or its TEQ. Plaintiffs and the putative class members are at risk of exposure to as much as 100,000 times the TEQ of 4 ppt dioxin.

187. Dioxin is a known human carcinogen and is so hazardous to human health that no "safe" level of exposure has been established.

188. The defendants' activities, as aforesaid, caused the plaintiffs and the members of the putative class to be exposed to dioxin contamination in the air, soil, and in the homes, places

of employment, governmental buildings, schools and public places of the plaintiffs and class members.

189. Because of the extraordinarily high dioxin levels in the environments of the effected communities, the plaintiffs and the members of the putative class are at an increased risk of contracting one or more serious and life threatening and life ending diseases including, but not limited to the following:

a. Chloracne, biochemical liver-test abnormalities, elevated blood lipids, fetal injury, and porphyria cutanea tarda;

b. Hormonal , neurologic, and immunologic injuries;

c. Carcinogenic, genetic, reproductive, and developmental effects;

d. Non-hodgkin's lymphoma, Hodgkin's lymphoma, and soft tissue sarcoma.

190. Early detection of the various cancers, blood diseases, endocrine diseases and developmental abnormalities increases the chances for successful treatment and management of the aforesaid adverse health conditions. Therefore, it is reasonably necessary for the plaintiffs to undergo periodic health monitoring and medical examinations different than medical care, examinations, and treatment plaintiffs and members of the putative class would undergo in the normal course of their lives had the complained of exposures not occurred.

191. Medical monitoring procedures exist that make early detection of the adverse medical conditions herein complained of possible and desirable.

192. Wherefore plaintiffs on behalf of themselves and the putative class members demand judgment of and from the defendants and each of them in an amount and manner which will assure the costs of medical monitoring will be paid.

DEMAND FOR JUDGMENT

193. The representative plaintiffs, on behalf of the putative classes demand as follows:

194. For the Propertied Plaintiffs and the putative class members making up the Propertied class, an amount adequate to compensate for loss of value of real estate and any improvements thereon, including the loss of use, any clean up costs and in the event of a total loss, the loss of the intrinsic value of a home. And the Propertied Plaintiffs further demand an amount sufficient to test their homes, buildings, and other property to determine the levels of dioxins/furans.

195. For the Medical Monitoring classes an amount sufficient to provide for testing of their persons to determine body burden of dioxins/furans and an amount sufficient to insure ongoing examinations and tests to provide for early detection of disease.

196. For the entire class of persons adversely affected by dioxins/furans contamination, as aforesaid, sufficient funds and monies to test the entire Class Affected area to determine the extent and nature of the dioxins/furans contamination along with sufficient funds to effect an environmental cleanup to restore the affected communities to environmental health in terms of dioxins/furans contamination.

197. For the entire class of persons, an order directing that the defendants be permanently enjoined from further releases of dioxins/furans for the Nitro plant site.

198. Inasmuch as the conduct of the defendants has been characterized by deliberate and willful conduct in causing the dioxins/furans contamination and because the defendants have over the years engaged in fraudulent cover-ups of the risks of dioxins/furans this case is appropriate for an award of punitive damages.

WHEREFORE as to all counts plaintiffs on behalf of themselves and those putative class members they represent demand judgment of and from the defendants and each of them, jointly and severely an amount sufficient to compensate them for their provable losses.

Plaintiffs further demand as and for punitive damages an amount equal to ten times the provable compensatory damages to deter the defendants from future conduct and protect other communities from similar conduct by these defendants in the future.

PLAINTIFFS DEMAND A TRIAL BY JURY AS TO ALL COUNTS.

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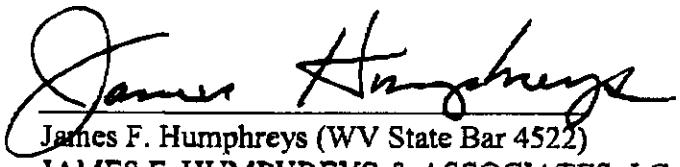

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