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12 **DEWAYNE JOHNSON**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN FRANCISCO**

15 DEWAYNE JOHNSON,

16 Plaintiff,

17 v.

18 MONSANTO COMPANY

19 Defendants.

Case No. CGC-16-550128

**PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE OF COMPLAINTS
FILED AGAINST MONSANTO**

Trial Judge: Hon. Judge Suzanne Bolanos

Trial Date: June 18, 2018

Time: 9:30 a.m.

Department: 504

ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

06/21/2018
Clerk of the Court

BY: KALENE APOLONIO

Deputy Clerk

TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:

You ARE HEREBY NOTIFIED THAT, pursuant to California Evidence Code sections 451, 452 and 453, and California Code of Civil Procedure section 437c(b), Plaintiff will and hereby does respectfully request that this Court take judicial notice of the following public records and documents:

1. Attached hereto as exhibits 1 through 10 are true and correct copies of the following Complaints:

Complaint Name	Case No.	Jurisdiction
<i>DeAngelis v. Monsanto</i> (Exhibit 1)	95-01922	Court of Common Pleas Montgomery County, Pennsylvania
<i>Courture v. Monsanto</i> (Exhibit 2)	CV-91-97	U.S. District Court of Monsanto
<i>Bidegain v. Monsanto</i> (Exhibit 3)	CGC05445155	San Francisco Superior Court
<i>Walsch v. BASF, et al.</i> (Exhibit 4)	Code 004 – TOXIC TORT NO: GD	COURT OF COMMON PLEAS OF ALLEGHENY COUNTY PENNSYLVANIA, CIVIL DIVISION
<i>Hall v. Monsanto</i> (Exhibit 5)	NC053187	Los Angeles County Superior Court, California
<i>McCallister v. Monsanto</i> (Exhibit 6)	BC490551	Los Angeles County Superior Court, California
<i>Sanchez v. Monsanto</i> (Exhibit 7)	BC542612	Los Angeles County Superior Court, California
<i>Giglio v. Monsanto</i> (Exhibit 8)	3:15-cv-02279	U.S. District Court for the Southern District of California
<i>Sheppard v. Monsanto</i> (Exhibit 9)	2:15-cv-08632-BRO-RAO	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA
<i>Fitzgerald v. Monsanto</i> (Exhibit 10)	2:15-cv-05494-SJF-GRB	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

1 **Legal Authority:**

2 California Evidence Code Sections 452(d) states in pertinent part:

3 Judicial notice may be taken of the following matters to the extent that they are not embraced
4 within Section 451:

5 (d) Records of (1) any court of this state or (2) any court of record of the United States or of any
6 state of the United States

7
8 Evid. Code. § 452 (d). Furthermore:

9 The trial court shall take judicial notice of any matter specified in Section 452 if a party requests
10 it and:

11 (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise,
12 to enable such adverse party to prepare to meet the request; and

13 (b) Furnishes the court with sufficient information to enable it to take judicial notice of the
14 matter.

15 Cal. Evid. Code § 453 (West).

16 All of the attached documents are complaints from lawsuits against Monsanto that occurred
17 before Plaintiff's last use of glyphosate. These documents are not being offered for the truth of the
18 matter asserted, but rather for the purposes that Monsanto was on notice that there were allegations of
19 cancers of blood cells. The same type of cancer suffered by Plaintiff. There is no question as to the
20 authenticity of these documents. Monsanto provided several of the complaints to the Plaintiff and
21 Monsanto is a Defendant on each of these complaints and therefore are well aware that these
22 documents are authentic. Plaintiff will also obtain certified copies of the complaints filed outside of
23 the San Francisco Superior Court should Monsanto somehow question the authenticity.

24 For the Aforementioned reasons Plaintiff respectfully requests that the Court take judicial
25 notice of the above-referenced documents.

26 DATED: June 21, 2018

27 Respectfully submitted,

28 **THE MILLER FIRM, LLC**

By: /s/ Curtis G. Hoke

Curtis G. Hoke (SBN 282465)

1 Timothy Litzenburg (*Appearance pro hac vice*)
2 Michael J. Miller (*Appearance Pro Hac Vice*)

3 **THE MILLER FIRM, LLC**

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11 *Attorneys for Plaintiff,*

12 *DEWAYNE JOHNSON*

EXHIBIT 1

De Angelis Complaint

KESSLER & LOMBARDI
BY: Stuart W. Kessler, Esquire
I.D. #34416
111 West Germantown Pike
Plymouth Meeting, PA 19462
(610) 834-1020

95 MAY 15 PM 2:35

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEITH DEANGELIS :
vs. : No. 95-01922
E.I. DU PONT DE NEMOURS & :
COMPANY, INC. :
and :
MONSANTO COMPANY :
and :
DOW CHEMICAL COMPANY :
and :
ELANCO PRODUCTS COMPANY :
DIVISION OF ELI LILLY COMPANY :

COMPLAINT

1. Plaintiff, Keith DeAngelis, at all times material hereto, was an adult individual and citizen and resident of the Commonwealth of Pennsylvania residing at 1214 Colwell Lane, Coshohocken, Commonwealth of Pennsylvania.

2. Defendant, E.I Du Pont De Nemours and Company, Inc. (hereinafter referred to as "DuPont") at all times relevant and material hereto is a Delaware corporation doing business in the Commonwealth of Pennsylvania and County of Montgomery acting through agents and its representatives with a registered address in Pennsylvania of 1635 Market Street, Philadelphia, Pennsylvania.

3. Said Defendant has engaged in the solicitation of business within the state through agents and representatives as well as advertising of its products through various media.

4. Defendant, Monsanto Company (hereinafter referred to as

"Monsanto") at all times relevant and material hereto is a Delaware corporation doing business in the Commonwealth of Pennsylvania and County of Montgomery acting through agents and its representatives with a registered address in Pennsylvania of 1635 Market Street, Philadelphia, Pennsylvania.

5. Said Defendant has engaged in the solicitation of business within the state through agents and representatives as well as advertising of its products through various media.

6. Defendant, Dow Chemical Company (hereinafter referred to as "Dow") at all times relevant and material hereto is a Delaware corporation doing business in the Commonwealth of Pennsylvania and County of Montgomery acting through agents and its representatives with a registered address in Pennsylvania of 1635 Market Street, Philadelphia, Pennsylvania.

7. Said Defendant has engaged in the solicitation of business within the state through agents and representatives as well as advertising of its products through various media.

8. Defendant, Elanco Products Company a division of Eli Lilly Company (hereinafter referred to as "Elanco") at all times relevant and material hereto is an Indiana corporation doing business in the Commonwealth of Pennsylvania and County of Montgomery acting through agents and its representatives with a principal place of business at The Lilly Corporate Center Indianapolis, Indiana.

9. Said Defendant has engaged in the solicitation of business within the state through agents and representatives as well as

advertising of its products through various media.

10. At all times relevant hereto, the Defendants acted through their duly authorized agents, servants, and employees, who acted in the scope of their employment and in furtherance of the business of the Defendants.

10. At all times relevant hereto, the Defendants were in the business of supplying, distributing, manufacturing and/or selling herbicides and/or products containing herbicide chemicals and said products were utilized within the Commonwealth of Pennsylvania in the ordinary course of commerce, trade and use.

11. From approximately July, 1983 through 1992, Plaintiff was employed by The Pennsylvania Turnpike Commission of the Commonwealth of Pennsylvania and acting within the normal scope of his employment, where he was involved in the application of products containing herbicides along the Pennsylvania Turnpike. His duties required that he work with and around herbicides and/or products containing herbicides which were supplied, distributed, manufactured and/or sold by Defendants and he thereby became exposed to, in contact with and inhaled dangerous herbicides.

12. The herbicides and herbicide-containing products to which Plaintiff was exposed reached him in substantially the same condition as when they left the Defendants' possession and control.

13. The herbicides and herbicide-containing products of Defendants to which Plaintiff was exposed were used in a manner of which they were intended by Defendants and in a manner which was foreseeable to Defendants.

14. Solely as a result of his contact and inhalation of herbicides from Defendants' herbicides and herbicide containing products and the actions and inactions of Defendants as set forth herein, Plaintiff contracted chemically induced non-Hodgkins lymphoma cancer, which condition is permanent and has caused and will in the future cause great pain and suffering to Plaintiff.

15. On or about March, 1989, Plaintiff was informed by his doctor that he was suffering from non-Hodgkins lymphoma.

16. Solely as a direct and proximate result of the Plaintiff's exposure to Defendants' herbicides and herbicide containing products as aforesaid and Defendants' actions and inactions as set forth herein, Plaintiff has and will in the future:

- (a) Suffer pain from non-Hodgkins lymphoma cancer and the various treatment for same;
- (b) Undergo multiple operations for treatment of the aforementioned disease and the results thereof;
- (c) Suffer from the effects of chemotherapy and the deterioration of hips, bones, teeth from said therapy;
- (d) Suffer nausea, headaches, vomiting, disfiguring of toe nails and fingernails, loss of hair and other side-effects of the aforementioned disease and the treatment thereof;
- (e) Severe physical pain, suffering, anguish, trauma, mental upset and humiliation, and for an indefinite

time in the future Plaintiff will continue to suffer such pain, suffering, anguish, trauma, mental upset and humiliation, to his great detriment and loss;

- (f) Shock to his nerves and nervous system;
- (g) Shortened life expectancy, loss of life's pleasures and an interruption to his lifestyle which will continue to so deprive him for an indefinite time in the future to his great detriment and loss;
- (h) Some or all of the above injuries and damages will be permanent in nature, all to Plaintiff's great detriment and loss;
- (i) Such other injuries and damages, the full extent of which are not known at the present, but which may be identified during these proceedings.

17. As a further direct and proximate result of the aforesaid occurrence, Plaintiff, Keith DeAngelis has or may suffer loss of wages.

18. As a further direct and proximate result of the aforesaid occurrence, Plaintiff has been or will be obliged to receive and undergo medical attention and care and to expend various sums of money or to incur various expenses and may be obliged to continue to expend such sums or incur such expenditures for an indefinite time in the future.

19. As a further direct and proximate result of the aforesaid occurrence, Plaintiff has been prevented from attending to his usual daily activities and duties, and will continue to be

prevented from attending to her usual daily activities and duties for an indefinite time into the future, all to his great detriment and loss.

20. As a further direct and proximate result of the aforesaid, Plaintiff has suffered a loss of earnings and an impairment to his earning capacity and ability to work, which losses Plaintiff will continue to suffer on a permanent basis for an indefinite time in the future, all to his great financial detriment and loss.

COUNT I - NEGLIGENCE

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, E.I. DE DU PONT NEMOURS & COMPANY, INC.

21. The allegations contained in paragraphs one through twenty are incorporated herein by reference as though the same were fully set forth at length.

22. Defendant, Du Pont was negligent in failing to provide a safe product (one such product used by Plaintiff was "krenite") in the following respects:

(a) Carelessly and negligently distributing, supplying, manufacturing and selling the herbicide and herbicide-containing products in a dangerous condition so as to cause injury to Plaintiff;

(b) Carelessly and negligently allowing a dangerous condition to exist by failing to properly package the herbicide and herbicide-containing products;

(c) Carelessly and negligently allowing a dangerous condition to exist by failing to inspect the packaging of the herbicide and herbicide-containing products;

(d) Carelessly and negligently creating and allowing a dangerous condition by failing to provide proper instructions for handling of and exposure to the herbicide and herbicide-containing product;

(e) Failing to exercise the requisite degree of care and caution in the distribution, manufacture, supply and sale of the herbicide and herbicide-containing products;

(f) Failing to warn of the dangers of the herbicide and herbicide-containing products when the Defendant knew or should have known that the use of and/or exposure to the herbicide and herbicide-containing products would cause disease and injury;

(g) Failing to take reasonable precautions to warn of the dangers to which Plaintiff was exposed when Defendant knew or should have known of the dangers;

(h) Failing to warn Plaintiff of what would be safe and sufficient wearing apparel for a person who is exposed to or using herbicides and herbicide-containing products;

(i) Failing to warn Plaintiff of what would be safe, sufficient and proper protective equipment when using or being exposed to the herbicides and herbicide-containing products;

(j) Failing to test the herbicide and herbicide-containing products in order to ascertain the dangers involved;

(k) Failing to remove the herbicides and herbicide-containing

products from the market when the Defendants knew or should have known of the hazards of the exposure to them;

(l) Violating the laws of the Commonwealth of Pennsylvania;

(m) Violating the laws of the United States;

(n) Failing to use due care and caution under the circumstances.

23. The Defendants are liable under the enterprise liability doctrine, in that there was a custom and practice in the herbicide and chemical manufacturing industries of omitting warnings that the products containing these substances were dangerous to the health of individuals and failing to take other safety measures which created an unreasonable risk of harm to Plaintiff.

24. The Defendants are liable under the market share liability doctrine in that the Defendants were at all times relevant hereto manufacturers of a substantial share of herbicide-containing products which were manufactured and sold to the Plaintiff's employer and to other parties in the United States. As such, they are liable to the Plaintiff under the market share doctrine for at least that percentage of their share of the market during the relevant periods of time.

25. At all times relevant hereto, the above-named Defendants acted jointly and severally, and the Defendants are jointly and/or severally liable to the Plaintiff.

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, E.I. Du Pont De Nemours & Company, Inc. jointly and/or severally in an amount in excess of the arbitration limits

plus interest and costs.

COUNT II - STRICT LIABILITY

**PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, E.I. DE DU PONT NEMOURS &
COMPANY, INC.**

26. The allegations contained in paragraphs one through twenty-six are incorporated herein by reference as though the same were fully set forth at length.

27. Defendants are strictly liable to Plaintiff as follows:

(a) For failure to properly, adequately and safely label their product or products;

(b) For selling a product or products that were in a defective condition and were unreasonably dangerous for their intended use;

(c) For failure to give adequate and complete warnings of the known or knowable dangers involved in the use and exposure to the product or products;

28. Based upon the foregoing, Defendants are strictly liable to Plaintiff under the principals of Restatement (Second) of Torts 402A

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, E.I. Du Pont De Nemours & Company, Inc. jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT III - BREACH OF WARRANTY

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, E.I. DE DU PONT NEMOURS &

COMPANY, INC.

29. The allegations contained in paragraphs one through twenty-eight are incorporated herein by reference as though the same were fully set forth at length.

30. As a result of the foregoing Defendants are liable to the Plaintiff for the breach of express and/or implied warranties that the product or products sold by them were merchantable, fit for use and suitable and fit for a particular purpose under common law and 13 Pa. Cons. Stat. 2314 and 2315.

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, E.I. Du Pont De Nemours & Company, Inc. jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT IV - GROSS, WILLFUL AND WANTON MISCONDUCT

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, E.I. DE DU PONT NEMOURS & COMPANY, INC.

31. The allegations contained in paragraphs one through thirty are incorporated herein by reference as though the same were fully set forth at length.

32. The Defendants are liable to the Plaintiff for their gross, willful and wanton misconduct in their fraudulent and active concealment and misrepresentation of the dangerous characteristics of herbicides, as well as concealing the detrimental aspects of herbicides, specifically but not limited to "krenite."

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, E.I. Du Pont De Nemours & Company, Inc. jointly

and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT V - NEGLIGENCE

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, MONSANTO COMPANY

33. The allegations contained in paragraphs one through thirty-two are incorporated herein by reference as though the same were fully set forth at length.

34. Defendant, Monsanto was negligent in failing to provide a safe product (one such product used by Plaintiff was "Roundup") in the following respects:

(a) Carelessly and negligently distributing, supplying, manufacturing and selling the herbicide and herbicide-containing products in a dangerous condition so as to cause injury to Plaintiff;

(b) Carelessly and negligently allowing a dangerous condition to exist by failing to properly package the herbicide and herbicide-containing products;

(c) Carelessly and negligently allowing a dangerous condition to exist by failing to inspect the packaging of the herbicide and herbicide-containing products;

(d) Carelessly and negligently creating and allowing a dangerous condition by failing to provide proper instructions for handling of and exposure to the herbicide and herbicide-containing product;

(e) Failing to exercise the requisite degree of care and

caution in the distribution, manufacture, supply and sale of the herbicide and herbicide-containing products;

(f) Failing to warn of the dangers of the herbicide and herbicide-containing products when the Defendant knew or should have known that the use of and/or exposure to the herbicide and herbicide-containing products would cause disease and injury;

(g) Failing to take reasonable precautions to warn of the dangers to which Plaintiff was exposed when Defendant knew or should have known of the dangers;

(h) Failing to warn Plaintiff of what would be safe and sufficient wearing apparel for a person who is exposed to or using herbicides and herbicide-containing products;

(i) Failing to warn Plaintiff of what would be safe, sufficient and proper protective equipment when using or being exposed to the herbicides and herbicide-containing products;

(j) Failing to test the herbicide and herbicide-containing products in order to ascertain the dangers involved;

(k) Failing to remove the herbicides and herbicide-containing products from the market when the Defendants knew or should have known of the hazards of the exposure to them;

(l) Violating the laws of the Commonwealth of Pennsylvania;

(m) Violating the laws of the United States;

(n) Failing to use due care and caution under the circumstances.

35. The Defendants are liable under the enterprise liability doctrine, in that there was a custom and practice in the herbicide

and chemical manufacturing industries of omitting warnings that the products containing these substances were dangerous to the health of individuals and failing to take other safety measures which created an unreasonable risk of harm to Plaintiff.

36. The Defendants are liable under the market share liability doctrine in that the Defendants were at all times relevant hereto manufacturers of a substantial share of herbicide-containing products which were manufactured and sold to the Plaintiff's employer and to other parties in the United States. As such, they are liable to the Plaintiff under the market share doctrine for at least that percentage of their share of the market during the relevant periods of time.

37. At all times relevant hereto, the above-named Defendants acted jointly and severally, and the Defendants are jointly and/or severally liable to the Plaintiff.

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Monsanto Company, jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT VI - STRICT LIABILITY

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, MONSANTO COMPANY

38. The allegations contained in paragraphs one through thirty-eight are incorporated herein by reference as though the same were fully set forth at length.

39. Defendants are strictly liable to Plaintiff as follows:

(a) For failure to properly, adequately and safely label

their product or products;

(b) For selling a product or products that were in a defective condition and were unreasonably dangerous for their intended use;

(c) For failure to give adequate and complete warnings of the known or knowable dangers involved in the use and exposure to the product or products;

40. Based upon the foregoing, Defendants are strictly liable to Plaintiff under the principals of Restatement (Second) of Torts 402A

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Monsanto Company, jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT VII- BREACH OF WARRANTY

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, MONSANTO COMPANY

41. The allegations contained in paragraphs one through forty are incorporated herein by reference as though the same were fully set forth at length.

42. As a result of the foregoing Defendants are liable to the Plaintiff for the breach of express and/or implied warranties that the product or products sold by them were merchantable, fit for use and suitable and fit for a particular purpose under common law and 13 Pa. Cons. Stat. 2314 and 2315.

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Monsanto Company, jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT VIII - GROSS, WILLFUL AND WANTON MISCONDUCT

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, MONSANTO COMPANY

43. The allegations contained in paragraphs one through forty-two are incorporated herein by reference as though the same were fully set forth at length.

44. The Defendants are liable to the Plaintiff for their gross, willful and wanton misconduct in their fraudulent and active concealment and misrepresentation of the dangerous characteristics of herbicides, as well as concealing the detrimental aspects of herbicides, specifically but not limited to "roundup."

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Monsanto Company jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT IX - NEGLIGENCE

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, DOW CHEMICAL COMPANY

45. The allegations contained in paragraphs one through forty-four are incorporated herein by reference as though the same were fully set forth at length.

46. Defendant, Dow was negligent in failing to provide a safe product for use as a herbicide in the following respects:

(a) Carelessly and negligently distributing, supplying, manufacturing and selling the herbicide and herbicide-containing products in a dangerous condition so as to cause injury to Plaintiff;

(b) Carelessly and negligently allowing a dangerous condition

to exist by failing to properly package the herbicide and herbicide-containing products;

(c) Carelessly and negligently allowing a dangerous condition to exist by failing to inspect the packaging of the herbicide and herbicide-containing products;

(d) Carelessly and negligently creating and allowing a dangerous condition by failing to provide proper instructions for handling of and exposure to the herbicide and herbicide-containing product;

(e) Failing to exercise the requisite degree of care and caution in the distribution, manufacture, supply and sale of the herbicide and herbicide-containing products;

(f) Failing to warn of the dangers of the herbicide and herbicide-containing products when the Defendant knew or should have known that the use of and/or exposure to the herbicide and herbicide-containing products would cause disease and injury;

(g) Failing to take reasonable precautions to warn of the dangers to which Plaintiff was exposed when Defendant knew or should have known of the dangers;

(h) Failing to warn Plaintiff of what would be safe and sufficient wearing apparel for a person who is exposed to or using herbicides and herbicide-containing products;

(i) Failing to warn Plaintiff of what would be safe, sufficient and proper protective equipment when using or being exposed to the herbicides and herbicide-containing products;

(j) Failing to test the herbicide and herbicide-containing

products in order to ascertain the dangers involved;

(k) Failing to remove the herbicides and herbicide-containing products from the market when the Defendants knew or should have known of the hazards of the exposure to them;

(l) Violating the laws of the Commonwealth of Pennsylvania;

(m) Violating the laws of the United States;

(n) Failing to use due care and caution under the circumstances.

47. The Defendants are liable under the enterprise liability doctrine, in that there was a custom and practice in the herbicide and chemical manufacturing industries of omitting warnings that the products containing these substances were dangerous to the health of individuals and failing to take other safety measures which created an unreasonable risk of harm to Plaintiff.

48. The Defendants are liable under the market share liability doctrine in that the Defendants were at all times relevant hereto manufacturers of a substantial share of herbicide-containing products which were manufactured and sold to the Plaintiff's employer and to other parties in the United States. As such, they are liable to the Plaintiff under the market share doctrine for at least that percentage of their share of the market during the relevant periods of time.

49. At all times relevant hereto, the above-named Defendants acted jointly and severally, and the Defendants are jointly and/or severally liable to the Plaintiff.

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against

the Defendant, Dow Chemical Company jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT X - STRICT LIABILITY

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, DOW CHEMICAL COMPANY

50. The allegations contained in paragraphs one through forty-nine are incorporated herein by reference as though the same were fully set forth at length.

51. Defendants are strictly liable to Plaintiff as follows:

(a) For failure to properly, adequately and safely label their product or products;

(b) For selling a product or products that were in a defective condition and were unreasonably dangerous for their intended use;

(c) For failure to give adequate and complete warnings of the known or knowable dangers involved in the use and exposure to the product or products;

52. Based upon the foregoing, Defendants are strictly liable to Plaintiff under the principals of Restatement (Second) of Torts 402A

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Dow Chemical Company, jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT XI - BREACH OF WARRANTY

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, DOW CHEMICAL COMPANY

53. The allegations contained in paragraphs one through

fifty-two are incorporated herein by reference as though the same were fully set forth at length.

54. As a result of the foregoing Defendants are liable to the Plaintiff for the breach of express and/or implied warranties that the product or products sold by them were merchantable, fit for use and suitable and fit for a particular purpose under common law and 13 Pa. Cons. Stat. 2314 and 2315.

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Dow Chemical Company jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT XII - GROSS, WILLFUL AND WANTON MISCONDUCT
PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, DOW CHEMICAL COMPANY

55. The allegations contained in paragraphs one through fifty-four are incorporated herein by reference as though the same were fully set forth at length.

56. The Defendants are liable to the Plaintiff for their gross, willful and wanton misconduct in their fraudulent and active concealment and misrepresentation of the dangerous characteristics of herbicides, as well as concealing the detrimental aspects of herbicides, specifically but not limited to

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Dow Chemical Company jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT XIII - NEGLIGENCE
PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, ELANCO PRODUCTS COMPANY
DIVISION OF ELI LILLY COMPANY

57. The allegations contained in paragraphs one through fifty-six are incorporated herein by reference as though the same were fully set forth at length.

58. Defendant, Du Pont was negligent in failing to provide a safe product (one such product used by Plaintiff was "surflan") in the following respects:

(a) Carelessly and negligently distributing, supplying, manufacturing and selling the herbicide and herbicide-containing products in a dangerous condition so as to cause injury to Plaintiff;

(b) Carelessly and negligently allowing a dangerous condition to exist by failing to properly package the herbicide and herbicide-containing products;

(c) Carelessly and negligently allowing a dangerous condition to exist by failing to inspect the packaging of the herbicide and herbicide-containing products;

(d) Carelessly and negligently creating and allowing a dangerous condition by failing to provide proper instructions for handling of and exposure to the herbicide and herbicide-containing product;

(e) Failing to exercise the requisite degree of care and caution in the distribution, manufacture, supply and sale of the herbicide and herbicide-containing products;

(f) Failing to warn of the dangers of the herbicide and herbicide-containing products when the Defendant knew or should have known that the use of and/or exposure to the herbicide and

herbicide-containing products would cause disease and injury;

(g) Failing to take reasonable precautions to warn of the dangers to which Plaintiff was exposed when Defendant knew or should have known of the dangers;

(h) Failing to warn Plaintiff of what would be safe and sufficient wearing apparel for a person who is exposed to or using herbicides and herbicide-containing products;

(i) Failing to warn Plaintiff of what would be safe, sufficient and proper protective equipment when using or being exposed to the herbicides and herbicide-containing products;

(j) Failing to test the herbicide and herbicide-containing products in order to ascertain the dangers involved;

(k) Failing to remove the herbicides and herbicide-containing products from the market when the Defendants knew or should have known of the hazards of the exposure to them;

(l) Violating the laws of the Commonwealth of Pennsylvania;

(m) Violating the laws of the United States;

(n) Failing to use due care and caution under the circumstances.

59. The Defendants are liable under the enterprise liability doctrine, in that there was a custom and practice in the herbicide and chemical manufacturing industries of omitting warnings that the products containing these substances were dangerous to the health of individuals and failing to take other safety measures which created an unreasonable risk of harm to Plaintiff.

60. The Defendants are liable under the market share

liability doctrine in that the Defendants were at all times relevant hereto manufacturers of a substantial share of herbicide-containing products which were manufactured and sold to the Plaintiff's employer and to other parties in the United States. As such, they are liable to the Plaintiff under the market share doctrine for at least that percentage of their share of the market during the relevant periods of time.

61. At all times relevant hereto, the above-named Defendants acted jointly and severally, and the Defendants are jointly and/or severally liable to the Plaintiff.

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Elanco Products Company, Division of Eli Lilly Company jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT XIV - STRICT LIABILITY

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, ELANCO PRODUCTS COMPANY

DIVISION OF ELI LILLY COMPANY

62. The allegations contained in paragraphs one through sixty-one are incorporated herein by reference as though the same were fully set forth at length.

63. Defendants are strictly liable to Plaintiff as follows:

(a) For failure to properly, adequately and safely label their product or products;

(b) For selling a product or products that were in a defective condition and were unreasonably dangerous for their

intended use;

(c) For failure to give adequate and complete warnings of the known or knowable dangers involved in the use and exposure to the product or products;

64. Based upon the foregoing, Defendants are strictly liable to Plaintiff under the principals of Restatement (Second) of Torts 402A

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Elanco Products Company Division of Eli Lilly Company jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT XV - BREACH OF WARRANTY

PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, ELANCO PRODUCTS COMPANY

DIVISION OF ELI LILLY COMPANY

65. The allegations contained in paragraphs one through sixty-four are incorporated herein by reference as though the same were fully set forth at length.

66. As a result of the foregoing Defendants are liable to the Plaintiff for the breach of express and/or implied warranties that the product or products sold by them were merchantable, fit for use and suitable and fit for a particular purpose under common law and 13 Pa. Cons. Stat. 2314 and 2315.

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Elanco Products Company Division of Eli Lilly Company jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

COUNT XVI - GROSS, WILLFUL AND WANTON MISCONDUCT
PLAINTIFF, KEITH DEANGELIS V. DEFENDANT, ELANCO PRODUCTS COMPANY
DIVISION OF ELI LILLY COMPANY

67. The allegations contained in paragraphs one through sixty-six are incorporated herein by reference as though the same were fully set forth at length.

68. The Defendants are liable to the Plaintiff for their gross, willful and wanton misconduct in their fraudulent and active concealment and misrepresentation of the dangerous characteristics of herbicides, as well as concealing the detrimental aspects of herbicides, specifically but not limited to "surflan"

WHEREFORE, Plaintiff, Keith DeAngelis demands judgment against the Defendant, Elanco Products Company Division of Eli Lilly Company jointly and/or severally in an amount in excess of the arbitration limits plus interest and costs.

KESSLER & LOMBARDI

BY: 

Stuart W. Kessler, Esquire
Attorney for Plaintiff,


COMMONWEALTH OF PENNSYLVANIA

COUNTY OF MONTGOMERY

I, Stuart W. Kessler, Esquire, of KESSLER & LOMBARDI, being duly sworn according to law, depose and state that I am the attorney for the Plaintiffs and that I make this affidavit on their behalf and that the said Plaintiffs are unavailable and unable to make this verification on their own behalf within the time allotted for filing of this pleading and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigatory material in the file.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S., Subsection 4904, relating to unsworn falsifications to authorities.



STUART W. KESSLER, ESQUIRE
Attorney I.D. 34416

5/11/95
Dated

KESSLER & LOMBARDI
BY: Stuart W. Kessler, Esquire
I.D. #34416
111 West Germantown Pike
Plymouth Meeting, PA 19462
(610) 834-1020

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEITH DEANGELIS	:	
vs.	:	No. 95-01922
E.I. DU PONT DE NEMOURS &	:	
COMPANY, INC.	:	
and	:	
MONSANTO COMPANY	:	
and	:	
DOW CHEMICAL COMPANY	:	
and	:	
ELANCO PRODUCTS COMPANY	:	
DIVISION OF ELI LILLY COMPANY	:	

PRAECIPE TO SUBSTITUTE VERIFICATION

TO THE PROTHONOTARY:

Kindly substitute the attached Verification on the Complaint
filed on May 15, 1995, for Plaintiff, Keith DeAngelis, in the
above-captioned matter.

BY:


STUART W. KESSLER
Attorney for Plaintiff

VERIFICATION

I verify that the statements made in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S., Subsection 4904, relating to unsworn falsifications to authorities.

5-19-95

DATE

Keith DeAngelis
Keith DeAngelis

CLERK OF THE
PROTHONOTARY
MONTGOMERY COUNTY, PA.
95 FEB 27 AM 11:52

WHITE AND WILLIAMS

By: Thomas M. Goutman
Identification No. 30236
1800 One Liberty Place
Philadelphia, Pa. 19103-7395
(215) 864-7057

Attorneys for Monsanto Company

KEITH DEANGELIS

vs.

E.I. DUPONT DE NEMOURS &
COMPANY, INC., MONSANTO COMPANY,
DOW CHEMICAL COMPANY, and
ELANCO PRODUCTS COMPANY

: COURT OF COMMON PLEAS
: MONTGOMERY COUNTY
:
:
:
: NO. 95-01922

DEMAND FOR JURY TRIAL

TO THE PROTHONOTARY:

Defendant above named hereby demands a jury trial in the above-captioned matter. Said jury to consist of 12 jurors.

WHITE AND WILLIAMS

By

Thomas M. Goutman
Thomas M. Goutman

RECEIVED
CLERK OF COURT
MONTGOMERY COUNTY, PA.
95 FEB 27 AM 11:52

WHITE AND WILLIAMS

By: Thomas M. Goutman
Identification No. 30236
1800 One Liberty Place
Philadelphia, Pa. 19103-7395
(215) 864-7057

Attorneys for Monsanto Company

KEITH DEANGELIS

vs.

E.I. DUPONT DE NEMOURS &
COMPANY, INC., MONSANTO COMPANY,
DOW CHEMICAL COMPANY, and
ELANCO PRODUCTS COMPANY

: COURT OF COMMON PLEAS
: MONTGOMERY COUNTY
:
:
:

: NO. 95-01922

ORDER FOR APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Defendant Monsanto Company
in the above-captioned matter.

WHITE AND WILLIAMS

By Thomas M. Goutman
Thomas M. Goutman

95 FEB 27 AM 11:52
MONTGOMERY COUNTY, PA.

WHITE AND WILLIAMS

By: Thomas M. Goutman
Identification No. 30236
1800 One Liberty Place
Philadelphia, Pa. 19103-7395
(215) 864-7057

Attorneys for Monsanto Company

KEITH DEANGELIS

vs.

E.I. DUPONT DE NEMOURS &
COMPANY, INC., MONSANTO COMPANY,
DOW CHEMICAL COMPANY, and
ELANCO PRODUCTS COMPANY

: COURT OF COMMON PLEAS
: MONTGOMERY COUNTY
:
:
:

: NO. 95-01922

PRAECIPE TO FILE COMPLAINT

TO THE PROTHONOTARY:

Please enter a Rule upon plaintiff to file a Complaint within 20 days hereof or suffer the entry of a Judgment of Non Pros.

WHITE AND WILLIAMS

By Thomas M. Goutman
Thomas M. Goutman

RULE TO FILE COMPLAINT

AND NOW, this day of , 1995, a Rule is hereby granted upon plaintiff to file a Complaint herein within 20 days after service hereof or suffer the entry of a Judgment of Non Pros.

William J. H. H.
Prothonotary

William J. H. H.
DEPUTY

EXHIBIT 2

Couture Complaint

United States District Court

DISTRICT OF MONTANA

DAVID W. COUTURE

V.

DOW CHEMICAL U.S.A., ET AL.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: CV-91-87-04-PG

FILED
OCT 23 1991
CLERK
JULIE SEREN
DATE

TO: (Name and Address of Defendant)

MONSANTO COMPANY
800 N. Lindbergh Blvd.
St. Louis, MO

Reg. Agent: C. T. Corporations
406 Fuller Avenue
Helena, MT 59601

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

DAVID M. McLEAN
KNIGHT, DAHOOD, McLEAN & EVERETT
113 E. Third Street
Anaconda, Mt 59711

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOJO PLEASICH, JR.

CLERK

Jorn Lou Severer

OCT 23 1991

DATE

MC # 910426

DAVID M. McLEAN, ESQ.
 RAY J. DAYTON, ESQ.
 KNIGHT, DAHOOD, McLEAN & EVERETT
 113 East Third Street
 P. O. Box 727
 Anaconda, MT 59711
 (406)563-3424

ATTORNEYS FOR PLAINTIFF

-cc'd Lou Severen.....

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MONTANA
 BUTTE DIVISION

DAVID W. COUTURE

Plaintiff,

vs.

CAUSE NO. CV-91-87-BU-P6H

DOW CHEMICAL U.S.A., an
 operating unit of The Dow
 Chemical Company, a Delaware
 Corporation; SANDOZ CROP
 PROTECTION CORPORATION, a
 New York Corporation; PLATTE
 CHEMICAL CO., INC., a Nebraska
 Corporation; AMERICAN CYANAMID
 COMPANY, a Maine Corporation;
 LOVELAND INDUSTRIES, INC., a
 Colorado Corporation; E. I.
 DUPONT de NEMOURS & CO., a
 Delaware Corporation; MONSANTO
 COMPANY, a Delaware Corporation;
 WEST-CHEM, INC., a Wyoming
 Corporation d/b/a WEST-CHEM
 AGRICULTURAL,

Defendants.



COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT AND DEMAND FOR JURY TRIAL

STATEMENT OF JURISDICTION AND VENUE

I

At all times pertinent herein, Plaintiff, DAVID W. COUTURE, was a resident of the County of Silver Bow, State of Montana.

II

Defendant, DOW CHEMICAL, U.S.A., at all times pertinent herein, was an operating unit of The Dow Chemical Company, a corporation incorporated under the laws of the State of Delaware, licensed to do business and doing business in Midland, Michigan, and engaged in the manufacture and sale of a herbicide known as PICLORAM and marketed under the brand names TORDON (R) 22K WEED KILLER and TORDON (R) 10K WEED KILLER.

III

Defendant, SANDOZ CROP PROTECTION CORPORATION, at all times pertinent herein, was a New York corporation, licensed to do business and doing business at 1300 East Touhy Avenue, City of Des Plaines, State of Illinois, and engaged in the manufacture and sale of a herbicide marketed under the brand name BANVEL 720 and a herbicide marketed under the brand name WEEDMASTER.

IV

Defendant, PLATTE CHEMICAL CO., INC., was, at all times pertinent herein, a Nebraska corporation, licensed to do business and doing business at 150 South Main Street, City of Fremont, State of Nebraska, and engaged in the manufacture and sale of a herbicide marketed under the brand name CLEAN CROP LOW VOL 8 ESTER WEED KILLER and a herbicide marketed under the brand name CLEAN CROP AMINE 4 2, 4-D WEED KILLER and a herbicide marketed under the brand name CLEAN CROP TRIFLURALIN 4 EC.

V

Defendant, AMERICAN CYANAMID COMPANY, was, at all times pertinent herein, a Maine corporation, licensed to do business and doing business in the City of Wayne, State of New Jersey, and engaged in the manufacture and sale of a herbicide marketed under the brand name ARSENAL.

VI

Defendant, LOVELAND INDUSTRIES, INC., was, at all times pertinent herein, a Colorado corporation, licensed to do business and doing business in the City of Loveland, State of Colorado, and engaged in the manufacture and sale of a surfactant marketed under the brand name LI 700 and a surfactant marketed under the brand name ACTIVATOR 90.

VII

Defendant, E. I. DUPONT de NEMOURS & CO., at all times pertinent herein, was a Delaware corporation, licensed to do business and doing business at 1007 Market Street, City of Wilmington, State of Delaware, and engaged in the manufacture and sale of a herbicide marketed under the brand name OUST.

VIII

Defendant, MONSANTO COMPANY, at all times pertinent herein, was a corporation incorporated under the laws of the State of Delaware, licensed to do business and doing business at 800 N. Lindbergh Blvd., City of St. Louis, State of Missouri, and was engaged in the manufacture and sale of a herbicide marketed under the brand name ROUNDUP.

IX

Defendant, WEST-CHEM, INC., at all times pertinent herein, was a corporation incorporated under the laws of the State of Wyoming, licensed to do business and doing business in the State of Montana under the assumed business name WEST-CHEM AGRICULTURAL in the City of Billings, State of Montana, and was engaged in the sale and distribution in the State of Montana of the products manufactured by all the other Defendants.

X

This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332 in that the matter in controversy exceeds the sum of \$50,000.00, exclusive of interest and costs, and that complete diversity of citizenship exists between the Plaintiff and all Defendants.

XI

Venue is proper in the Butte Division of the United States District Court for the District of Montana because, at all times pertinent herein, Plaintiff resided in the County of Silver Bow, State of Montana.

GENERAL ALLEGATIONS

XII

In April, 1983, the Plaintiff was hired by the Montana Power Company in Butte, Montana, as a Revegetation and Weed Control Technician. His duties were to control weeds and revegetate disturbed ground following construction of electric transmission lines and gas pipelines. His duties also included sterilizing ground within the confines of electrical substations.

XIII

By 1987, the Plaintiff was promoted to the position

1 of Right-of-Way Management Supervisor. His duties included
2 supervising the Revegetation and Weed Control Technicians.
3 During the time period from 1983, when he was hired by the
4 Montana Power Company, through 1987, the Plaintiff was engaged
5 in the spraying of the herbicides and surfactants manufactured,
6 distributed and sold by the Defendants to this action.
7

8 XIV

9 In August, 1990, Plaintiff was diagnosed as suffering
10 from cancerous mycosis fungoides (a T cell lymphoma) as a
11 result of his considerable exposure from April, 1983 through
12 1987, to the herbicides and surfactants manufactured, distributed
13 and sold by the Defendants to this action, either singularly
14 or collectively.
15

16 COUNT ONE - NEGLIGENCE
17

18 XV

19 That the herbicides and surfactants, acting singularly
20 or collectively, manufactured and marketed by Defendants,
21 are inherently dangerous and toxic to human beings and other
22 living things exposed to them.
23

24 XVI

25 That the Defendants had a duty in manufacturing, distribut-
26 ing and selling their products to use a proper standard of
27
28

1 care to produce a product that could be used by consumers,
2 including Plaintiff, without undue risk to their personal
3 safety and health.
4

5 XVII

6 That Defendants breached the duty owed to ultimate con-
7 sumers of their product, including the Plaintiff.
8

9 XVIII

10 That as a direct and proximate result of the negligence
11 of Defendants, the Plaintiff has suffered serious and permanent
12 injury in that he is suffering from cancerous mycosis fungoides
13 (a T cell lymphoma) as a result of considerable exposure
14 to the products manufactured, distributed and sold by Defendants,
15 acting singularly or collectively.
16

17 COUNT TWO - NEGLIGENT FAILURE TO WARN
18

19 XIX

20 That the herbicides and surfactants, acting either singu-
21 larly or collectively, manufactured and marketed by Defendants
22 are inherently dangerous and toxic to human beings and other
23 living things exposed to them.
24

25 XX
26
27
28

1 In light of the inherently dangerous nature of the herbi-
2 cides and surfactants, acting either singularly or collectively,
3 manufactured, distributed and sold by Defendants, Defendants
4 had a duty to provide adequate warnings with the products
5 that would allow Plaintiff, as a consumer of the products,
6 to apprehend the danger and take measures to prevent injurious
7 exposure to it.

8
9 XXI

10 The warning statements, instructions, and antidote state-
11 ments provided by Defendants with their products, as specified
12 hereinbefore, were inadequate to warn Plaintiff, as a con-
13 sumer of the products, of dangers associated with their use
14 in that said products, acting singularly or collectively,
15 could cause the Plaintiff to suffer from cancerous mycosis
16 fungoides (a T cell lymphoma) as a result of his considerable
17 exposure. Defendants, therefore, breached their duty to
18 warn of such dangers.

19
20 XXII

21 As a result of Defendants' breach of duty adequately
22 to warn of dangers associated with the use of their products,
23 acting singularly or collectively, Plaintiff was exposed
24 to the products and was injured by their toxic characteristics.

XXIII

Plaintiff has suffered injury and loss as a result of exposure to the Defendants' products, acting singularly or collectively, in that Plaintiff presently suffers from cancerous mycosis fungoides (a T cell lymphoma) as a result of his considerable exposure to said products.

COUNT THREE - STRICT LIABILITY

XXIV

The products manufactured, distributed and marketed by Defendants, acting singularly or collectively, are inherently dangerous and unavoidably unsafe in that they are toxic to human beings and other living things exposed to them.

XXV

The products manufactured, distributed and marketed by Defendants were defectively designed and manufactured and failed to operate in a safe and reasonable manner due to the presence of said defects.

XXVI

The Plaintiff was unaware of the defects in the products manufactured, distributed and marketed by the Defendants. Defendants, because of their position as manufacturer, distributor and seller of said products, owed a strict duty

1 to Plaintiff not to cause him serious bodily injury and harm
2 as a result of the use of said products.
3

4 XXVII

5 That as a direct and proximate result of the Plaintiff's
6 use of Defendants' defective products, he has suffered severe,
7 permanent and life-threatening injuries in that he is suffering
8 from cancerous mycosis fungoides (a T cell lymphoma).
9

10 COUNT FOUR - STRICT LIABILITY (FAILURE TO WARN)
11

12 XXVIII

13 The products manufactured, distributed, and marketed
14 by Defendants, acting singularly or collectively, are inherently
15 dangerous and unavoidably unsafe in that they are toxic to
16 human beings and other living things exposed to them.
17

18 XXIX

19 Between April, 1983 and the end of 1987, Defendants
20 manufactured, distributed and sold to the Montana Power Com-
21 pany, the employer of the Plaintiff, containers of herbicides
22 and surfactants for use as weed killers and defoliants.
23

24 XXX

25 That the products sold by Defendants, which were ultimately
26
27
28

1 used by the Plaintiff, were in their original packaging pro-
2 vided by the Defendants at the time of the products' manufacture
3 and had not been altered or reformulated in any way, other
4 than to be diluted, at the time when it was put into use
5 by the Plaintiff.
6

7
8 XXXI

9 That the products manufactured, distributed and sold
10 by Defendants, which were ultimately used by the Plaintiff,
11 were in a defective and unreasonably dangerous condition
12 due to the fact that they were not accompanied by adequate
13 warnings that would have allowed the Plaintiff to use the
14 product without injurious exposure. The warnings accompanying
15 said products were inadequate in that they failed to advise
16 Plaintiff that considerable exposure could result in cancerous
17 mycosis fungoides (a T cell lymphoma).
18

19 XXXII

20 As a result of the defective and unreasonably dangerous
21 condition of the products manufactured, distributed and sold
22 by Defendants, acting singularly or collectively, Plaintiff
23 became exposed to said products in such a fashion that he
24 was injured by their toxic characteristics.
25

26 XXXIII

1 At the time the Plaintiff suffered injurious exposure
2 to the Defendants' products, acting singularly or collectively,
3 Plaintiff was using said products in accordance with normal
4 procedures and in compliance with all instructions and warn-
5 ings provided by Defendants regarding use of said products.
6

7
8 XXXIV

9 The Plaintiff has suffered injury and severe loss as a
10 result of exposure to the products manufactured, distributed
11 and sold by the Defendants, acting singularly or collectively,
12 in that he is presently suffering from cancerous mycosis
13 fungoides (a T cell lymphoma) as a result of prolonged exposure
14 to Defendants' products.

15 COUNT FIVE - STRICT LIABILITY (ULTRAHAZARDOUS RISK
16 TO ABNORMALLY DANGEROUS PRODUCT)
17

18 XXXV

19 That the products manufactured, distributed and marketed
20 by the Defendants create an ultrahazardous risk to consumers
21 due to the abnormally dangerous and unsafe nature of said
22 products which subjects Defendants to strict liability in
23 tort.
24

25 XXXVI
26
27
28

1 That Plaintiff became exposed to the products manufactured,
2 distributed and marketed by Defendants and as a result of
3 said exposure was injured by their toxic and dangerous charac-
4 teristics.

5
6 XXXVII

7 The Plaintiff has suffered injury and severe loss as
8 a result of exposure to the products manufactured, distributed
9 and marketed by Defendants, acting singularly or collectively,
10 in that he is presently suffering from cancerous mycosis
11 fungoides (a T cell lymphoma) as a result of prolonged ex-
12 posure to Defendants' products.

13
14 WHEREFORE, Plaintiff prays for judgment against the
15 Defendants, jointly and severally, as follows:
16

17 1. Special damages for medical care and treatment,
18 hospitalization, and incidental damages, past, present and
19 future, in conformity to proof.
20

21 2. Loss of wages, past, present and future, in conformity
22 to proof.
23

24 3. Loss of ability to pursue a normal course of life
25 in conformity to proof.
26
27
28

1
2
3 4. General damages in a sum to be proven at time of
4 trial.

5
6 5. Costs of suit and other relief as the Court deems
7 just and proper under all circumstances of this case.

8 DATED this 30th day of September, 1991.
9

10
11 KNIGHT, DAHOOD, McLEAN & EVERETT

12
13 By 

14 118 East Third Street
Anaconda, MT 59711

15 ATTORNEYS FOR PLAINTIFF
16
17
18
19
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21
22
23
24
25
26
27
28

EXHIBIT 3

Bidegain Complaint



CORPORATION SERVICE COMPANY®

Notice of Service of Process

PCT / ALL
Transmittal Number: 4195996
Date Processed: 10/10/2005

Primary Contact: SOP Scan - Monsanto
SOP - PowerBrief - Tallahassee
SOP - Scan
1201 Hays Street
Tallahassee, FL 32301-2607

Entity:	Monsanto Company Entity ID Number 2282193
Entity Served:	Monsanto Company
Title of Action:	Steven Bidegain vs. Valent Biosciences Corporation
Document(s) Type:	Summons/Complaint
Nature of Action:	Personal Injury
Court:	San Francisco County, Superior Court, California
Case Number:	CGC05445155
Jurisdiction Served:	California
Date Served on CSC:	10/10/2005
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Greg Coolidge 562-437-4499

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

VALENT BIOSCIENCES CORPORATION, an Illinois corporation; GRIFFIN LLC, a corporation; HELENA CHEMICAL COMPANY (formerly known as Helbent Company), a Delaware corporation;

[SEE ATTACHMENT FOR ADDITIONAL DEFENDANTS]

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

STEVEN BIDEGAIN and YVETTE BIDEGAIN

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco Superior Court
400 McAllister Street
400 McAllister Street
San Francisco, CA 94102
Central District

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

GREG COOLIDGE (SBN 211984)

METZGER LAW GROUP

401 E. Ocean Boulevard, Suite 800

Long Beach, California 90802-4966

DATE: SEP 23 2005

(Fecha)

GORDON PARK - LI

Clerk, by

Jun Panelo

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served1. ☐ as an individual defendant2. ☐ as the person sued under the fictitious name of (specify):3. ☒ on behalf of (specify): Monsanto Company, a Delaware Corporationunder: ☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)4. ☐ by personal delivery on (date):

PETITIONER/PLAINTIFF: STEVEN BIDEgain and YVETTE BIDEgain
RESPONDENT/DEFENDANT: VALENT BIOSCIENCES CORPORATION, et al.

CASE NUMBER:

ATTACHMENT TO SUMMONS

ACETO CORPORATION (individually and as successor-in-interest to Aceto Agricultural Chemicals Corporation), a corporation; UNIVAR USA, INC. (formerly known as and as successor-in-interest to Van Waters & Rogers, Inc., a Washington corporation; UNITED PHOSPHOROUS, INC. (UPI), a Delaware corporation; AVENTIS CROPS SCIENCE USA INC. DBA IN CALIFORNIA AS CALIFORNIA AS ACS USA, INC. (individually and as successor-in-interest to Amchem Products, Inc. and Rhone-Poulenc AG Company, Inc.), a New York corporation; CIBA-GEIGY CORPORATION, a New York corporation; SYNGENTA CROP PROTECTION INC. (individually and as successor-in-interest to the Crop Protection Division of Ciba-Geigy Corporation and Novartis), a Delaware corporation; DREXEL CHEMICAL COMPANY, a Tennessee corporation; ABATE-A-WEED, INC., a California corporation; WYETH HOLDINGS CORPORATION (formerly known as and as successor-in-interest to American Cyanamid Company), a Maine corporation; DOW AGROSCIENCES LLC (individually and as successor-in-interest to Dow Elanco), a Delaware corporation; E. I. DUPONT de NEMOURS & COMPANY, Delaware corporation; 3M COMPANY (formerly known as Minnesota Mining & Manufacturing Company), a Delaware corporation; MONSANTO COMPANY, a Delaware corporation; FBI/GORDON CORPORATION, a corporation; UNITED AGRI PRODUCTS (also known as United Agri Products Financial Services, Inc.), an unknown entity; WESTERN EXTERMINATOR COMPANY (individually, and formerly known as and as successor-in-interest to Target Specialty Products, Inc. and Target Chemicals), a California corporation; WILBUR-ELLIS COMPANY, a California corporation; ROHM AND HAAS COMPANY, a Delaware corporation; BASF CORPORATION, a corporation; and DOES 1 through 100, inclusive,

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TORT & ENVIRONMENTAL LITIGATION
OCCUPATIONAL & ENVIRONMENTAL LUNG
DISEASE CANCER AND TOXIC INJURIES

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Attorneys for Plaintiffs
STEVEN BIDEgain and YVETTE BIDEgain

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

STEVEN BIDEgain and YVETTE
BIDEgain,

Plaintiffs,

vs.

VALENT BIOSCIENCES CORPORATION,
an Illinois corporation;
GRIFFIN LLC, a corporation;
HELENA CHEMICAL COMPANY
(formerly known as Helbent
Company), a Delaware
corporation; ACETO CORPORATION
(individually and as successor-
in-interest to Aceto
Agricultural Chemicals
Corporation), a corporation;
UNIVAR USA, INC. (formerly
known as and as successor-in-
interest to Van Waters &
Rogers, Inc., a Washington
corporation; UNITED
PHOSPHOROUS, INC. (UPI), a
Delaware corporation; AVENTIS
CROPSCIENCE USA INC. DBA IN
CALIFORNIA AS CALIFORNIA AS ACS
USA, INC. (individually and as
successor-in-interest to Amchem
Products, Inc. and Rhone-
Poulenc AG Company, Inc.), a
New York corporation; CIBA-
GEIGY CORPORATION, a New York
corporation; SYNGENTA CROP
PROTECTION INC. (individually

ENDORSED
FILED
San Francisco County Superior Court

SEP 23 2005

GORDON PARK-LI, Clerk
BY: JUN P. PANELO
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

FEB 24 2006 - 9 @ AM

DEPARTMENT 212

CASE NO. 05 445155

COMPLAINT FOR TOXIC INJURIES
ASSERTING CAUSES OF ACTION
FOR:

- (1) NEGLIGENCE;
- (2) STRICT LIABILITY - DESIGN
DEFECT;
- (3) BREACH OF IMPLIED
WARRANTIES;
- (4) LOSS OF CONSORTIUM

DEMAND FOR TRIAL BY JURY [MADE
PURSUANT TO C.C.P. § 600 AND
F.R.C.P. 38 IF THIS ACTION IS
EVER REMOVED TO FEDERAL COURT]

COMPLAINT FOR TOXIC INJURIES; DEMAND FOR JURY TRIAL

1 and as successor-in-interest to)
2 the Crop Protection Division of)
3 Ciba-Geigy Corporation and)
4 Novartis), a Delaware)
5 corporation; DREXEL CHEMICAL)
6 COMPANY, a Tennessee)
7 corporation; ABATE-A-WEED,)
8 INC., a California corporation;)
9 WYETH HOLDINGS CORPORATION)
10 (formerly known as and as)
11 successor-in-interest to)
12 American Cyanamid Company), a)
13 Maine corporation; DOW)
14 AGROSCIENCES LLC (individually)
15 and as successor-in-interest to)
16 Dow Elanco), a Delaware)
17 corporation; E. I. DuPONT de)
18 NEMOURS & COMPANY, Delaware)
19 corporation; 3M COMPANY)
20 (formerly known as Minnesota)
21 Mining & Manufacturing)
22 Company), a Delaware)
23 corporation; MONSANTO COMPANY,)
24 a Delaware corporation;)
25 PBI/GORDON CORPORATION, a)
26 corporation; UNITED AGRI)
27 PRODUCTS (also known as United)
28 Agri Products Financial)
Services, Inc.), an unknown)
entity; WESTERN EXTERMINATOR)
COMPANY (individually, and)
formerly known as and as)
successor-in-interest to Target)
Specialty Products, Inc. and)
Target Chemicals), a California)
corporation; WILBUR-ELLIS)
COMPANY, a California)
corporation; ROHM AND HAAS)
COMPANY, a Delaware)
corporation; BASF CORPORATION,)
a corporation; and DOES 1)
through 100, inclusive,)

Defendants.

Plaintiffs, Steven Bidegain and Yvette Bidegain, hereby
allege as follows:

THE PARTIES

1. At all material times hereto, Plaintiffs, Steven Bidegain and Yvette Bidegain, have been married and residing in the State of California.

2. Plaintiffs are informed and believe and thereon allege that Defendant, Valent Biosciences Corporation, is an Illinois corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

3. Plaintiffs are informed and believe and thereon allege that Defendant, Griffin LLC, is a corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

4. Plaintiffs are informed and believe and thereon allege that Defendant, Helena Chemical Company (formerly known as Helbent Company), is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

5. Plaintiffs are informed and believe and thereon allege that Defendant, Aceto Corporation (individually and as successor-in-interest to Aceto Agricultural Chemicals Corporation), is a corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

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COMPLAINT FOR TOXIC INJURIES; DEMAND FOR JURY TRIAL

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6. Plaintiffs are informed and believe and thereon allege that Defendant, Univar USA, Inc. (formerly known as and as successor-in-interest to Van Waters & Rogers, Inc., is a Washington corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

7. Plaintiffs are informed and believe and thereon allege that Defendant, United Phosphorous, Inc. (UPI), is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

8. Plaintiffs are informed and believe and thereon allege that Defendant, Aventis Cropscience USA, Inc. dba in California as California AS ACS USA, Inc. (individually and as successor-in-interest to Amchem Products, Inc. and Rhone-Poulenc AG Company, Inc.), is a New York corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

9. Plaintiffs are informed and believe and thereon allege that Defendant, Ciba-Geigy Corporation, is a New York corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

10. Plaintiffs are informed and believe and thereon allege that Defendant, Syngenta Crop Protection Inc. (individually and as successor-in-interest to the Crop Protection Division of Ciba-Geigy Corporation and Novartis), is a Delaware corporation, which at all material times has been doing business in the County of Los Angeles, State of California.

11. Plaintiffs are informed and believe and thereon allege that Defendant, Drexel Chemical Company, is a Tennessee

corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

12. Plaintiffs are informed and believe and thereon allege that Defendant, Abate-A-Weed, Inc., is a California corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

13. Plaintiffs are informed and believe and thereon allege that Defendant, Wyeth Holdings Corporation (formerly known as and as successor-in-interest to American Cyanamid Company), is a Maine corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

14. Plaintiffs are informed and believe and thereon allege that Defendant, Dow AgroSciences LLC (individually and as successor-in-interest to Dow Elanco), is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

15. Plaintiffs are informed and believe and thereon allege that Defendant, E. I. DuPont de Nemours & Company, is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

16. Plaintiffs are informed and believe and thereon allege that Defendant, 3M Company (formerly known as Minnesota Mining & Manufacturing Company), is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

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17. Plaintiffs are informed and believe and thereon allege that Defendant, Monsanto Company, is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

18. Plaintiffs are informed and believe and thereon allege that Defendant, PBI/Gordon Corporation, is a corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

19. Plaintiffs are informed and believe and thereon allege that Defendant, United Agri Products (also known as United Agri Products Financial Services, Inc.) is an entity of unknown type located in the State of California, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

20. Plaintiffs are informed and believe and thereon allege that Defendant, Western Exterminator Company (individually, and formerly known as and as successor-in-interest to Target Specialty Products, Inc. and Target Chemicals), is a California corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

21. Plaintiffs are informed and believe and thereon allege that Defendant, Wilbur-Ellis Company, is a California corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

22. Plaintiffs are informed and believe and thereon allege that Defendant, Rohm and Haas Company, is a Delaware corporation, which at all material times hereto, was doing

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1 business in the County of Los Angeles, State of California.

2 23. Plaintiffs are informed and believe and thereon
3 allege that Defendant, BASF Corporation, is a corporation, which
4 at all material times hereto, was doing business in the County of
5 Los Angeles, State of California.

6 24. The true names and capacities of Defendants Does 1
7 through 100 are unknown to plaintiffs, who therefore sues said
8 defendants by such fictitious names. Plaintiffs will amend this
9 complaint to state the true names and capacities of said
10 fictitious defendants when they have been ascertained. Plaintiffs
11 are informed and believe and thereon alleges that Defendants Does
12 1 through 100 are in some manner responsible for the occurrences
13 herein alleged, and that plaintiffs' damages as herein alleged
14 were proximately caused by their conduct.

15 25. Plaintiffs are informed and believe and based
16 thereon allege that, at all times material hereto, each of the
17 Defendants, including the fictitiously named Defendants, was
18 acting in an individual, corporate, partnership, associate,
19 parent-subsidiary, successor-predecessor, conspiratorial or other
20 capacity or as the agent, employee, co-conspirator, and/or alter
21 ego of its co-defendants, and in doing the acts herein alleged,
22 was acting within the course and scope of its authority as such
23 parent, successor, partner, associate, agent, employee, co-
24 conspirator, or alter ego, and with the permission, consent,
25 knowledge, authorization, ratification and direction of its co-
26 defendants, including all fictitiously named defendants.

27 //

28 //

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PRODUCT IDENTIFICATION

26. Following is a list of those chemical products thus far identified to which Plaintiff, Steven Bidegain, was exposed during the course of Plaintiff's employment with Cal-Trans and each of which Plaintiffs alleged caused Steven Bidegain's lymphoma and other related and consequential injuries:

Abate-A-Weed, Inc.

Distributor and supplier of:

Surflan

Surflan AS

Oust

Other products to be identified during discovery

Rhom & Haas

Manufacturer and supplier of:

Goal

Goal 1.6E

Wyeth Holdings Corporation (formerly known as and as successor-in-interest to American Cyanamid Co.)

Manufacturer and supplier of:

Aminotriazole

Amizol

Other products to be identified during discovery

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Aventis Cropscience USA (individually and as Successor-in-Interest to Amchem Products, Inc. and Rhone-Poulenc AG Company, Inc.)

Manufacturer and supplier of:
Aminotriazole
Ronstar 50W
Ronstar 50WSP
Other products to be identified during discovery

Ciba-Geigy Corporation

Manufacturer and supplier of:
Princep Caliber 90 (simazine)
Simazine
Other products to be identified during discovery

Syngenta Crop Protection, Inc. (individually, and as successor-in-interest to the Crop Science Division of Ciba-Geigy Corporation and Novartis)

Manufacturer and supplier of:
Princep Caliber 90 (simazine)
Predict (Norflurazon)
Simazine
Fusilade 2000
Endurance Herbicide
Other products to be identified during discovery

Drexel Chemical Company

Manufacturer and supplier of:
Diuron

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1 Diuron FL

2 Diuron 80 W

3 Other products to be identified during discovery

4
5 Dow AgroSciences, LLC (individually, and as successor-in-interest
6 to Dow Elanco)

7 Manufacturer and supplier of:

8 Surflan AS

9 Surflan 75W

10 Surflan

11 Treflan (Trifluralin)

12 Trifluralin

13 Garlon 4

14 Gallery 75

15 other products to be identified during discovery

16
17 E. I. DuPont de Nemours & Co.

18 Manufacturer and supplier of:

19 DiPel 2X

20 Direx 4L (Diuron)

21 Direx 4L - CA

22 Direx 4L - Griffin

23 Karmex

24 Oust

25 Krenite

26 Telar

27 Nutra - Sol

28 Other products to be identified during discovery

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3M Company (formerly Minnesota Mining & Manufacturing Co.)

Manufacturer and supplier of:
Embark 2S (Mefluidide)
Embark (Mefluidide)
Embark 3M (Mefluidide)
Embark AS (Mefluidide)
Other products to be identified during discovery

FBI/Gordon Corporation

Manufacturer and supplier of:
Embark 2S (Mefluidide)
Embark (Mefluidide)
Embark 3M (Mefluidide)
Embark AS (Mefluidide)
Other products to be identified during discovery

Monsanto Company

Manufacturer and supplier of:
Expedite (Glyphosate)
Rodeo (Glyphosate)
Roundup (Glyphosate)
Roundup Pro (Glyphosate)
Roundup Pro Dry
Other products to be identified during discovery

United Agri Products

Manufacturer and distributor of:
Roundup (Glyphosate)
Roundup Pro (Glyphosate)

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1 Surflan AS

2 Surflan 75W

3 Princep Caliber 90 (Simazine)

4 Devrinol 50W (United Agri Products is the manufacturer
5 and registrant of this product)

6 Other products to be identified during discovery

7
8 Western Exterminator Co. (formerly and as successor-in-interest to
9 Target Specialty Products, Inc.)

10 Distributor and supplier of:

11 Embark 2S (Mefluidide)

12 Princep Caliber 90 (Simazine)

13 Other products to be identified during discovery

14
15 Wilbur-Ellis Company

16 Manufacturer and distributor and supplier of:

17 Rodeo (Glyphosate)

18 Embark 2S (Mefluidide)

19 Bivert (containing aliphatic petroleum distillate)
20 (manufactured by Wilbur - Ellis Company, which is also the
21 registered trademark owner of "Bivert")

22 Other products to be identified during discovery

23
24 Valent Biosciences Corporation

25 Manufacturer and supplier of:

26 DiPel 2X

27 Other products to be identified during discovery

28 //

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Griffin LLC

Manufacturer and supplier of:

Direx 4L (Diuron)

Direx 4L - Griffin

Other products to be identified during discovery

Helena Chemical Company

Manufacturer and supplier of:

Diuron

Diuron FL

Diuron 80W

Other products to be identified during discovery

Aceto Corporation (individually, and as successor-in-interest to
Aceto Agricultural Chemicals Corporation)

Manufacturer and supplier of:

Karmex

Karmex 80W

Princep Caliber 90 (Simazine)

Amizol

Other products to be identified during discovery

Univar USA, Inc. (formerly known as and as successor-in-interest
to Van Waters & Rogers, Inc.)

Distributor and supplier of:

Karmex

Embark 2S

Other products to be identified during discovery

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United Phosphorus, Inc.

Manufacturer and supplier of:

Surflan AS

Other products to be identified during discovery

BASF Corporation

Manufacturer and supplier of:

Poast Herbicide (SLN980004)

Other products to be identified during discovery

GENERAL ALLEGATIONS

27. From about 1979 through October 2003, Plaintiff, Steven Bidegain, worked as a landscape worker for Cal-Trans at various Cal-Trans facilities in Northern California, including Marin County, Sonoma County, San Francisco County, and San Mateo County, during which Plaintiff and his co-workers in his direct proximity mixed and sprayed herbicides and other chemical products on weeds, plants, and brush as part of their employment. Plaintiffs are informed and believe and thereon allege that the injuries from which Plaintiff, Steven Bidegain, suffers and which are the subject of this action were sustained in the course of Plaintiff's work for Cal-Trans at its above facilities located in Northern California.

28. In the course of and throughout Plaintiff's employment with Cal-Trans, Plaintiff, Steven Bidegain, worked with and was exposed to each of those chemical products identified herein at Paragraph 26, as well as other chemical products of Does

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1 1-100 and the named defendants in this action of which Plaintiffs
 2 are presently unaware, and as a result of such use and exposure,
 3 Plaintiff, Steven Bidegain, was exposed to toxins contained within
 4 each of these chemical products. The chemical products to which
 5 Plaintiff, Steven Bidegain, was exposed contained significant
 6 concentrations of pesticides and organic solvents, including
 7 benzene and other organic solvents, each of which are toxic and
 8 capable of causing lymphoma. In the course of his work for Cal-
 9 Trans, Plaintiff, Steven Bidegain, was exposed to toxicologically
 10 significant levels of these toxic chemicals from each of
 11 defendants' chemical products. As a direct and proximate result
 12 of said exposure to said toxic chemical products, Plaintiff,
 13 Steven Bidegain, sustained serious injuries to his internal
 14 organs, including lymphoma. As medical treatment for Plaintiff's
 15 lymphoma, Plaintiff, Steven Bidegain, has been hospitalized and
 16 undergone other medically necessary and lifesaving treatment, and
 17 Plaintiff will continue to require such medical treatment in the
 18 future.

20 TOLLING OF STATUTE OF LIMITATIONS

21
 22 29. Plaintiff, Steven Bidegain, was first informed by
 23 his physician of a diagnosis of lymphoma on November 15, 2003.
 24 Prior to November 15, 2003, Plaintiffs did not discover, and could
 25 not reasonably have discovered, that Plaintiff, Steven Bidegain,
 26 had been injured and was suffering from lymphoma or any other
 27 disease, the toxic nature of said disease, or its occupational
 28 cause. The pathological effect of said disease occurred without

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1 perceptible trauma and Plaintiffs were blamelessly ignorant of its
2 cause. It was not until November 15, 2003, when Plaintiff, Steven
3 Bidegain, first received a diagnosis of lymphoma from his
4 physician, that Plaintiffs were even aware that Plaintiff, Steven
5 Bidegain, had sustained any hematologic injury or disease.

6 30. At the time Plaintiff, Steven Bidegain, was
7 diagnosed with lymphoma on November 15, 2003, no physician told
8 Plaintiff, Steven Bidegain, what the cause of his lymphoma was or
9 that Plaintiff's lymphoma even had a cause. Sometime thereafter
10 in mid-2004, Plaintiff, Steven Bidegain, received some literature
11 concerning some of the chemical products to which he was exposed,
12 and such information caused Plaintiff, Steven Bidegain, to suspect
13 for the first time that his lymphoma may have been caused by his
14 exposure to chemical products while working for Cal-Trans. The
15 first time Plaintiffs suspected that Plaintiff Steven Bidegain's
16 lymphoma might be occupationally related was therefore in mid-
17 2004, and Plaintiffs, as lay person untrained in medicine or
18 toxicology, could not reasonably have been expected to suspect the
19 cause of Steven Bidegain's lymphoma prior to mid-2004.
20

21 FIRST CAUSE OF ACTION

22 FOR NEGLIGENCE

23 (By Plaintiff, Steven Bidegain,
24 Against All Named Defendants and Does 1-100)
25

26 31. Plaintiffs refer to paragraphs 1 through 30 and, by
27 this reference, incorporate said paragraphs hereat as though set
28 forth in full.

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32. As manufacturers and distributors of chemical products, Defendants, and each of them, owed Plaintiff, Steven Bidegain, a legal duty to exercise due care in formulating, developing, researching, testing, producing, mixing, manufacturing, inspecting, selling, distributing, and delivering the foregoing chemical products to Cal-Trans at its facilities located in Northern California, including Marin County, Sonoma County, San Francisco County, and San Mateo County.

33. Defendants, and each of them, negligently and carelessly produced, refined, mixed, formulated, developed, researched, tested, produced, manufactured, inspected, sold, distributed, and delivered the foregoing chemical products to Cal-Trans at its facilities located at Northern California, including Marin County, Sonoma County, San Francisco County, and San Mateo County, whereat Plaintiff, Steven Bidegain, worked with and was exposed to each of said toxic chemical products during the course of his employment.

34. In the course of performing his job, Plaintiff, Steven Bidegain, was exposed to each of the foregoing toxic chemical products identified herein at Paragraph 26.

35. Each of the toxic chemical products to which Plaintiff, Steven Bidegain, was exposed, was manufactured and/or supplied by the foregoing defendants, as set forth in the section entitled "Product Identification" above at Paragraph 26.

36. As a result of Plaintiff Steven Bidegain's use of said toxic chemical products, toxins, including active ingredients as well as benzene, within each of said chemical products entered

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1 Plaintiff Steven Bidegain's body both by inhalation and by dermal
2 absorption.

3 37. Plaintiff, Steven Bidegain, suffers from a specific
4 illness, to wit, lymphoma, as well as other related and
5 consequential injuries.

6 38. Each of the foregoing chemical products caused
7 Plaintiff Steven Bidegain's lymphoma, and other related and
8 consequential injuries.

9 39. Each toxin that entered Plaintiff Steven Bidegain's
10 body from each of defendants' foregoing chemical products was a
11 substantial factor in bringing about, prolonging, and aggravating
12 his lymphoma and other related and consequential injuries.

13 40. As a direct and proximate result of said negligent
14 acts and omissions of Defendants, Plaintiff, Steven Bidegain,
15 suffers from lymphoma and other related and consequential medical
16 conditions.

17 41. As a direct and proximate result of said negligent
18 acts and omissions of Defendants, Plaintiffs have been required to
19 expend money and incur obligations for medical and related
20 expenses in an amount not yet determined but which is well in
21 excess of the jurisdictional minimum of the Court, and Plaintiff,
22 Steven Bidegain, has been unable to attend to his usual employment
23 and activities.

24 42. As a further direct and proximate result of the
25 negligent acts and omissions of defendants resulting in his severe
26 toxic injuries, Plaintiff, Steven Bidegain, has suffered lost
27 income and will continue to suffer loss of future income, support,
28 and maintenance, all to Plaintiffs' damage in a sum to be

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established according to proof.

43. As a further direct and proximate result of the negligent acts and omissions of defendants resulting in severe toxic injuries, Plaintiff, Steven Bidegain, has suffered and will continue to suffer damages for pain and suffering, mental anguish, emotional distress, fear of death, increased risk of future injury and disease, fear of increased risk of future injury and disease, disfigurement, diminished quality and enjoyment of life, immune system dysregulation, and other damages, all to be established according to proof at trial.

SECOND CAUSE OF ACTION

FOR STRICT LIABILITY - DESIGN DEFECT

(By Plaintiff, Steven Bidegain,
Against All Named Defendants and Does 1-100)

44. Plaintiffs refer to paragraphs 1 through 43 and, by this reference, incorporate said paragraphs herein as though set forth in full.

45. At all times mentioned herein, Defendants were the producers, refiners, designers, formulators, manufacturers, marketers, sellers, distributors, wholesalers, repackagers, suppliers, and transporters of chemical products which were delivered to or used at Cal-Trans' facilities located in Northern California, including Marin County, Sonoma County, San Francisco County, and San Mateo County, where Plaintiff, Steven Bidegain, worked with and was exposed to each of said chemical products identified herein at Paragraph 26.

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46. Each of Defendants' foregoing chemical products were defective in their design under the "consumer expectation test" because they failed to perform as safely as an ordinary user would expect when used in an intended or reasonably foreseeable manner, and each of said chemical products were defective in their design under the "risk/utility test because the risks inherent in said design outweighed the benefits thereof and feasible safer alternative designs existed at the time said chemical products were manufactured and sold to Plaintiff's employer, Cal-Trans.

47. Said design defects existed in each of Defendants' chemical products when said chemical products left defendants' possession.

48. As a direct and proximate result of said design defects, while using said chemical products in a manner that was reasonably foreseeable and intended by Defendants, Plaintiff, Steven Bidegain, was exposed to said chemical products in the course of his employment with Cal-Trans, and has suffered serious injuries and disease, including lymphoma and other related medical conditions.

49. In the course of performing his job, Plaintiff, Steven Bidegain, was exposed to each of the foregoing toxic chemical products identified herein at Paragraph 26.

50. Each of the toxic chemical products to which Plaintiff, Steven Bidegain, was exposed, was manufactured and/or supplied by the foregoing defendants, as set forth in the section entitled "Product Identification" above at Paragraph 26.

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1 51. As a result of Plaintiff Steven Bidegain's use of
2 said toxic chemical products, toxins, including active ingredients
3 as well as benzene, within each of said chemical products entered
4 Plaintiff Steven Bidegain's body both by inhalation and by dermal
5 absorption.

6 52. Plaintiff, Steven Bidegain, suffers from specific
7 illnesses, to wit, lymphoma, as well as other related and
8 consequential injuries.

9 53. Each of the foregoing chemical products caused
10 Plaintiff Steven Bidegain's lymphoma, and other related and
11 consequential injuries.

12 54. Each toxin that entered Plaintiff Steven Bidegain's
13 body from each of defendants' foregoing chemical products was a
14 substantial factor in bringing about, prolonging, and aggravating
15 his lymphoma and other related and consequential injuries.

16 55. As a direct and proximate result of said
17 defectively designed products of Defendants, Plaintiff, Steven
18 Bidegain, suffers from lymphoma and other related and
19 consequential medical conditions.

20 56. As a direct and proximate result of the defective
21 design of Defendants' chemical products, Plaintiffs have been
22 required to expend money and incur obligations for medical and
23 related expenses in an amount not yet determined but well in
24 excess of the jurisdictional minimum of this Court, and Plaintiff,
25 Steven Bidegain, has been unable to attend to Plaintiff, Steven
26 Bidegain's usual employment and activities.

27 57. As a further direct and proximate result of the
28 defective design of Defendants' chemical products, Plaintiff,

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Steven Bidegain, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

58. As a further direct and proximate result of defective design of said chemical products, Plaintiff, Steven Bidegain, has suffered and will continue to suffer damages for pain and suffering, mental anguish, emotional distress, fear of death, increased risk of future injury and disease, fear of increased risk of future injury and disease, disfigurement, diminished quality and enjoyment of life, immune system dysregulation, and other damages, according to proof at trial.

59. In exposing Plaintiff, Steven Bidegain, to said toxic, hematotoxic, immunotoxic, and carcinogenic chemical products, Defendants, and each of them, consciously disregarded Plaintiff's safety despite knowledge of the probable dangerous consequences of their products, and willfully and deliberately failed to avoid said dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants consciously decided to manufacture, distribute and market their chemical products with knowledge of their harmful effects and without remedying the toxic effects of their products.

60. Defendants' conduct in exposing Plaintiff to said toxic, hematotoxic, immunotoxic, carcinogenic and fibrogenic chemical products was despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety of

1 Plaintiffs, entitling Plaintiffs to punitive and exemplary
2 damages.

3
4 THIRD CAUSE OF ACTION

5 FOR BREACH OF IMPLIED WARRANTIES

6 (By Plaintiff, Steven Bidegain,

7 Against All Named Defendants and Does 1-100)

8
9 61. Plaintiffs refer to paragraphs 1 through 60 and, by
10 this reference, incorporate said paragraphs herein as though set
11 forth in full.

12 62. At all times mentioned herein, Defendants were the
13 producers, refiners, designers, formulators, manufacturers,
14 sellers, distributors, wholesalers, suppliers, and transporters of
15 chemical products which were delivered to or used at Cal-Trans's
16 facilities located in Northern California, including Marin County,
17 Sonoma County, San Francisco County, and San Mateo County, where
18 Plaintiff, Steven Bidegain, worked with and was exposed to each of
19 said chemical products identified herein at Paragraph 26.

20 63. Each of Defendants' chemical products to which
21 Plaintiff, Steven Bidegain, was exposed are toxic, hematotoxic,
22 immunotoxic, and carcinogenic.

23 64. By placing their chemical products in the stream of
24 commerce, Defendants, and each of them, impliedly warranted that
25 their chemical products were reasonably fit for their intended
26 uses, that their chemical products were of merchantable quality,
27 that they were not defective, that they would function as safely
28 as ordinary users would expect when used in an intended or

1 reasonably foreseeable manner, and that they would not cause
2 serious disease, harm, or death.

3
4 65. Defendants, and each of them, breached said implied
5 warranties, because their chemical products were not reasonably
6 fit for their intended uses, were not of merchantable quality,
7 were defectively designed, and failed to function as safely as an
8 ordinary user would expect when used in an intended or reasonably
9 foreseeable manner, and caused serious injuries to Plaintiff,
10 Steven Bidegain, to wit, lymphoma and other related and
11 consequential injuries.

12 66. In the course of performing his job, Plaintiff,
13 Steven Bidegain, was exposed to each of the foregoing toxic
14 chemical products identified herein at Paragraph 26.

15 67. Each of the toxic chemical products to which
16 Plaintiff, Steven Bidegain, was exposed, was manufactured and/or
17 supplied by the foregoing defendants, as set forth in the section
18 entitled "Product Identification" above at Paragraph 26.

19 68. As a result of Plaintiff Steven Bidegain's use of
20 said toxic chemical products, toxins, including active ingredients
21 as well as benzene, within each of said chemical products entered
22 Plaintiff Steven Bidegain's body both by inhalation and by dermal
23 absorption.

24 69. Plaintiff, Steven Bidegain, suffers from specific
25 illnesses, to wit, lymphoma, as well as other related and
26 consequential injuries.

27 70. Each of the foregoing chemical products caused
28 Plaintiff Steven Bidegain's lymphoma, and other related and

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consequential injuries.

71. Each toxin that entered Plaintiff Steven Bidegain's body from each of defendants' foregoing chemical products was a substantial factor in bringing about, prolonging, and aggravating his lymphoma and other related and consequential injuries.

72. As a direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Steven Bidegain, suffers from lymphoma and other related and consequential medical conditions.

73. As a direct and proximate result of Defendants' breaches of implied warranties, Plaintiffs have been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but well in excess of the jurisdictional minimum of the Court, and Plaintiff, Steven Bidegain, has been unable to attend to his usual employment and activities.

74. As a further direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Steven Bidegain, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

75. As a further direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Steven Bidegain, has suffered and will continue to suffer damages for pain and suffering, mental anguish, emotional distress, fear of death, increased risk of future injury and disease, fear of increased risk of future injury and disease, disfigurement, diminished quality and enjoyment of life, and other damages, all

1 to be established according to proof at trial.

2
3 FOURTH CAUSE OF ACTION

4 LOSS OF CONSORTIUM

5 (By Plaintiff, Yvette Bidegain,
6 Against All Named Defendants and Does 1-100)

7
8 76. Plaintiffs refer to paragraphs 1 through 75 and, by
9 this reference, incorporate said paragraphs herein in full.

10 77. At all material times hereto, Plaintiffs Steven and
11 Yvette Bidegain, have been married and living together as husband
12 and wife.

13 78. As a direct and proximate result of Defendants'
14 above-described conduct and Defendants' defective chemical
15 products, Plaintiff, Yvette Bidegain, has lost and been deprived
16 of the services, love, companionship, comfort, affection, society,
17 sexual relations, and solace of Plaintiff, Steven Bidegain, all to
18 the special and general damage of Plaintiff, Yvette Bidegain.
19 Plaintiff anticipates further loss of consortium in the future.

20
21 PRAYER FOR RELIEF

22
23 WHEREFORE, Plaintiffs pray for judgement as follows:

24
25 1. For general damages in a sum in excess of the
26 minimum jurisdictional amount of the court;

27 2. For medical expenses and incidental expenses
28 related thereto according to proof;

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3. For loss of earnings according to proof;
4. For household services according to proof;
5. For loss of consortium according to proof;
6. For increased risk of future injury and disease,
and fear of such, according to proof;
7. For diminished quality and enjoyment of life,
according to proof;
8. For loss of years of life, according to proof;
9. For other consequential damages for other injuries
as they are ascertained, according to proof;
10. For pre- and post-judgment interest allowed by law;
11. For punitive damages according to proof;
12. For plaintiffs' costs of suit incurred herein; and,
13. For such other and further relief as the Court
deems just and proper.

DATED: September 16, 2002 METZGER LAW GROUP
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GREG COOLIDGE, ESQ.
Attorneys for Plaintiffs,
STEVEN AND YVETTE BIDEgain

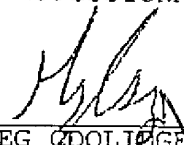
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DEMAND FOR JURY TRIAL

Pursuant to Cal. Code of Civil Procedure § 600 et seq. (and Rule 38 of the Federal Rules of Civil Procedure should this case ever be removed to federal court), Plaintiffs hereby demand trial by jury of all issues which may be tried to a jury.

DATED: September 16, 2005 METZGER LAW GROUP
A PROFESSIONAL LAW CORPORATION



GREG G. DOLIGE, ESQ.
Attorneys for Plaintiffs,
STEVEN AND YVETTE BIDEgain

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Attorneys for Plaintiffs
STEVEN BIDEgain and YVETTE BIDEgain

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

STEVEN BIDEgain and YVETTE
BIDEgain,

Plaintiffs,

vs.

VALENT BIOSCIENCES CORPORATION,
an Illinois corporation;
GRIFFIN LLC, a corporation;
HELENA CHEMICAL COMPANY
(formerly known as Helbent
Company), a Delaware
corporation; et al.,

Defendants.

CASE NO. CGC-05-445155

Assigned to the Honorable
Arlene T. Borick in Dept. 212

STATEMENT OF DAMAGES

STATEMENT OF DAMAGES

1 Plaintiffs, STEVEN BIDEGAIN and YVETTE BIDEGAIN, hereby
2 submit a Statement of Damages as follows:

3
4 1. General damages consisting of pain and suffering,
5 caused by the incident, and other injuries described in the
6 complaint on file herein, in the sum of \$1,500,000.00.

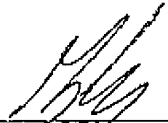
7 2. Special damages, consisting of medical expenses to
8 date, totaling approximately \$100,000.00, loss of earnings to
9 date totaling approximately \$150,000.00, estimated cost of future
10 medical care totaling approximately \$750,000.00, estimated loss of
11 future earning capacity totaling approximately \$200,000.00.

12 3. Loss of society and consortium by plaintiff's
13 spouse, totaling approximately \$1,000,000.00.

14 4. Punitive damages in the sum of \$3,000,000.00.

15
16 DATED: October 4, 2005

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28


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Attorneys for Plaintiffs
STEVEN BIDEGAIN and YVETTE BIDEGAIN

STATEMENT OF DAMAGES

EXHIBIT 4

Walsh Complaint

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
PENNSYLVANIA, CIVIL DIVISION

RICHARD THOMAS WALSH, Executor of the
Estate of THOMAS J. WALSH, deceased

Plaintiff,

vs.

BASF CORPORATION;
BAYER CORPORATION d/b/a
BAYER CROPSCIENCE, L.P., and BAYER
CROPSCIENCE HOLDING, INC., and/or
BAYER CROPSCIENCE, L.P. and BAYER
CROPSCIENCE HOLDING, INC., in their
own right;
BIOSAFE SYSTEMS, L.L.C.;
CHEMTURA CORPORATION;
CLEARY CHEMICAL CORP.;
DOW AGROSCIENCES, L.L.C.;
E.H. GRIFFITH, INC.;
E.I. DU PONT DE NEMOURS
AND CO., INC.;
G.B. BIOSCIENCES CORPORATION;
JOHN DEERE LANDSCAPING, INC.,
successor to LESCO, INC.;
MONSANTO COMPANY;
NUFARM AMERICAS, INC.;
REGAL CHEMICAL CO.;
SCOTTS-SIERRA CROP PROTECTION
CO.; and
SYNGENTA CROP PROTECTION, INC.

Defendants.

CIVIL DIVISION

Code 004 – TOXIC TORT

NO: GD

COMPLAINT IN CIVIL ACTION

FILED ON BEHALF OF PLAINTIFF
Richard Thomas Walsh, Executor of the
Estate of Thomas J. Walsh, deceased

Counsel of Record for This Party:

Anthony J. D’Amico, Esquire
PA ID #36501

John R. Kane, Esquire
PA ID #83771

SAVINIS, D’AMICO & KANE, L.L.C.
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Pittsburgh, PA 15219
(412) 227-6556

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
PENNSYLVANIA, CIVIL DIVISION

RICHARD THOMAS WALSH, Executor of CIVIL DIVISION
the Estate of THOMAS J. WALSH, deceased

Code 004

Plaintiff,

NO: GD

vs.

BASF CORPORATION;

Defendants.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

**LAWYER REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
920 CITY-COUNTY BUILDING, 414 GRANT STREET
PITTSBURGH, PA 15219
TELEPHONE: 412-261-5555**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
PENNSYLVANIA, CIVIL DIVISION

RICHARD THOMAS WALSH, Executor of the Estate of THOMAS J. WALSH, deceased

CIVIL DIVISION

Code 004

Plaintiff,

NO: GD

vs.

BASF CORPORATION;

Defendants.

COMPLAINT

1. Plaintiff, Richard Thomas Walsh, is a resident of Allegheny County, Pennsylvania, who lives at 14 Sumner Avenue, Apartment 2, Pittsburgh, PA 15221.

2. Defendants are corporations which at all times relevant hereto engaged in the conduct of business in Allegheny County, Pennsylvania.

3. On July 10, 2009, Plaintiff was duly appointed Executor of the Estate of the Deceased, who died on February 3, 2009, by the Register of Wills of Allegheny County, Pennsylvania at No. 020904294 of 2009.

4. These actions are based on the wrongful death provisions of the Judiciary Act of July 9, 1976, P.L. 586, 42 Pa. Con. Stat. Ann. §§ 8301 and 5524(2); and the survival action provisions of the Judiciary Act of July 9, 1976, P.L. 586, 42 Pa. Con. Stat. Ann. §§ 8302 and 5524(2), and the Pennsylvania Probate Estates and Fiduciary Code, Act of June 30, 1978, P.L. 508, 20 Pa. Con. Stat. Ann. § 3373.

5. Said Decedent did not bring an action, and no action was brought against the Defendant during the lifetime of the Decedent for the injuries which resulted in death, and

no action for the wrongful death of the said Decedent has been commenced against the Defendant on account of the grievances hereinafter set forth.

6. The action for the wrongful death of Plaintiff's Decedent is brought on behalf of the wrongful death beneficiaries.

7. The survival action is brought on behalf of the Estate of the Deceased.

8. From approximately 1970 through 2008, Plaintiff's Decedent worked on golf courses as a greens keeper, maintenance man and/or golf course superintendent. On the dates set forth in the counts that follow, and for yet undetermined dates, Plaintiff's decedent used and applied and was exposed to each and all of the Defendants' insecticides, which are set forth in more detail in this complaint.

9. The Plaintiff's Decedent was caused to suffer severe and serious injuries and damages, Acute Myelogenous Leukemia ("AML"), and death as the direct, proximate, and legal cause of the claims brought against Defendants, for which Defendants are jointly and severely liable.

10. Defendant knew or should have known in the exercise of reasonable care that its pesticides, when used by occupational groups such as golf course workers who apply various pesticides, are at substantial increased risk of developing AML.

11. As used herein, the term "pesticide" includes any substance or mixture of substances intended to prevent, destroy, repel, or mitigate pests.

12. As used herein, pesticide shall include insecticides, rodent poisons, weed killers, and products intended to kill fungus on lawns and grass.

13. The exposure to defendants' pesticides was in the course of his work applying the pesticides to golf courses. The pesticides came into contact with Plaintiff's decedent's skin, eyes, nose and lungs, and mouth and gastrointestinal system.

14. The Plaintiff's decedent absorbed toxins from the pesticides into his bloodstream, central nervous system and to the cells and organs of his body and the total and cumulative effect of the exposures to defendants' pesticides were the direct, proximate and legal cause of Plaintiff's decedent's injuries and damages that are claimed herein.

15. Plaintiff seeks compensatory damages as well as exemplary and punitive damages against defendants to punish the defendants for its acts and omissions which were willful, wanton, grossly negligent, reckless and in total disregard of Plaintiff's decedent's health and of the health and safety of users and consumers of its products.

16. The dates of exposure to Defendants' products as set forth in the counts that follow indicate the dates that the products were applied to the golf course by Plaintiff's decedent or his co-workers (application dates). The dates of application are set forth to the best of our knowledge, information and belief at this time. Additional application dates may become known through discovery. Plaintiff's Decedent's exposures to toxins from the products continued on dates subsequent to the application dates when Plaintiff's decedent traversed the golf course greens and fairways each and every day of his employment and absorbed their toxins into his body.

17. AML is a dose-response related disease which means that the more someone is exposed to pesticides, the greater their risk for the development of AML.

18. There is linear dose response relationship between the amount of pesticides to which an individual is exposed and the risk of developing AML. This concept is generally accepted in the medical and scientific communities.
19. The linear dose-response relationship is neither new nor novel, but rather maintains general acceptance within the scientific and medical profession.
20. AML is a dose-response disease which is a result of the cumulative exposures to pesticides that a person receives.
21. The cumulative exposure that an AML patient has received in his/her lifetime has caused impact to the blood has overwhelmed the body's defense mechanisms and has caused AML.
22. While AML is a single indivisible injury or disease process, due to individual susceptibility there is no way to determine from epidemiology or otherwise who will get AML from a specific dose and who will not; instead the generally accepted view of the medical community is that if someone gets the disease and if there is an identifiable exposure that is above background levels it contributes to causation.

**Count 1
Negligence**

**Walsh v. BASF Corporation
(Curalan (EG))**

23. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.
24. BASF Corporation (hereinafter "BASF") is a North Carolina Corporation with offices located at 26 Davis Drive, Resource Triangle Park, North Carolina 27709, and at all times relevant hereto manufactured, selected materials, compounded, inspected,

tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Curalan (EG) (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

25. At all times relevant hereto, BASF had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

26. On or about 6/11/2003, and for a substantial period of time after that date, Plaintiff’s decedent was exposed to and did take Curalan (EG) into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

27. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;

- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;

- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 2
Strict Liability

Walsh v. BASF Corporation
(Curalan (EG))

28. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

29. When BASF sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

30. At all times relevant hereto, BASF knew that its product was defective and that users of its product would suffer serious health problems including AML.

31. At all relevant times, BASF's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

32. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

33. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

34. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

35. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its

pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

36. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

37. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

38. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 3
Breach of Warranty

Walsh v. BASF Corporation
(Curalan (EG))

39. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

40. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

41. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

42. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 4
Wrongful Death**

**Walsh v. BASF Corporation
(Curalan (EG))**

43. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

44. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 5
Survival Claim**

**Walsh v. BASF Corporation
(Curalan (EG))**

45. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

46. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 6
Negligence**

**Walsh v. BASF Corporation
(Touché)**

47. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

48. BASF Corporation (hereinafter "BASF") is a North Carolina Corporation and has offices located at 26 Davis Drive, Research Triangle Park, North Carolina 27709 and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Touché (hereinafter "product" or "pesticide") in Allegheny County, Pennsylvania.

49. At all times relevant hereto, BASF had a duty to users of its pesticides and to Plaintiff's Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 11/22/1993; 7/6/2001; 7/7/2001; 7/8/2001; 8/2/2001; 8/5/2001; 8/7/2001; 5/21/2002; 5/23/2002; 5/24/2002; 6/11/2002; 7/2/2002; 7/3/2002; 7/4/2002; 7/11/2002; 7/14/2002; 7/15/2002; 7/16/2002; 8/1/2002; 8/2/2002; 8/3/2002; 9/4/2002; 9/5/2002; 9/7/2002; 9/9/2002; 3/28/2003; 3/29/2003; 4/3/2003; 5/8/2003; 5/11/2003; 5/18/2003; 5/20/2003; 6/11/2003; 6/14/2003; 6/15/2003; 6/24/2003; 7/5/2003; 7/6/2003; 7/10/2003; 7/17/2003; 7/24/2003; 8/5/2003; 8/7/2003; 8/29/2003; 9/1/2003; 3/15/2004; 5/20/2004; 6/29/2004; 6/30/2004; 7/1/2004; 7/2/2004; 7/5/2004; 8/31/2004; 9/6/2004; 9/28/2004; 10/7/2004; 8/23/2001; 8/24/2001; 8/25/2001; 8/30/2001; 10/4/2001; 6/21/2002; 6/23/2002; 6/25/2002; 8/25/2002; 6/7/05; 6/9/05; 6/14/05; 6/27/05; 6/28/05; 7/12/05; 7/21/05; 8/11/05; 9/7/05; 9/10/05; 9/21/05; 10/11/05; 10/13/05, and for a substantial period of time after each date, Plaintiff's decedent was exposed to and did take Touché into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

50. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;

- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 7
Strict Liability

Walsh v. BASF Corporation
(Touché)

51. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

52. When BASF sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

53. At all times relevant hereto, BASF knew that its product was defective and that users of its product would suffer serious health problems including AML.

54. At all relevant times, BASF's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

55. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

56. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

57. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

58. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

59. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

60. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

61. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 8
Breach of Warranty

Walsh v. BASF Corporation
(Touché)

62. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

63. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

64. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

65. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 9
Wrongful Death

Walsh v. BASF Corporation
(Touché)

66. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

67. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 10
Survival Claim

Walsh v. BASF Corporation
(Touché)

68. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

69. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 11
Negligence

Walsh v. BASF Corporation
(Vorlan)

70. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

71. BASF Corporation (hereinafter “BASF”) is a North Carolina Corporation with offices located at 26 Davis Drive, Resource Triangle Park, North Carolina 27709, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Vorlan (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

72. At all times relevant hereto, BASF had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

73. On or about 6/4/1988; 6/5/1988; 6/6/1988; 8/14/1988; 8/16/1988; 8/18/1988; 7/30/1989; 8/15/1989; 8/16/1989; 5/21/1990; 8/5/1990; 8/28/1990; 6/22/1991; 6/26/1991; 7/13/1991; 7/25/1991; 8/2/1991; 8/3/1991; 5/25/1993, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Vorlan into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

74. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 12
Strict Liability

Walsh v. BASF Corporation
(Vorlan)

75. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

76. When BASF sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

77. At all times relevant hereto, BASF knew that its product was defective and that users of its product would suffer serious health problems including AML.

78. At all relevant times, BASF's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

79. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

80. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

81. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

82. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

83. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

84. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

85. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 13
Breach of Warranty

Walsh v. BASF Corporation
(Vorlan)

86. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

87. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

88. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

89. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 14
Wrongful Death

Walsh v. BASF Corporation
(Vorlan)

90. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

91. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 15
Survival Claim**

**Walsh v. BASF Corporation
(Vorlan)**

92. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

93. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 16
Negligence**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Aliette WDG)**

94. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

95. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Aliette WDG (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

96. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

97. On or about 6/15/1994; 6/18/1994; 6/20/1994; 6/30/1994; 7/2/1994; 7/11/2001; 7/20/2001; 5/20/2002, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Aliette WDG into his body through

inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

98. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;

- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;

- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 17
Strict Liability

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Alette WDG)

99. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

100. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

101. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

102. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

103. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the

injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

104. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

105. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

106. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

107. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

108. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

109. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 18
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Alette WDG)

110. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

111. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

112. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

113. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 19
Wrongful Death

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Alette WDG)

114. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

115. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to

provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 20
Survival Claim**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Alette WDG)**

116. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

117. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;

- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 21
Negligence

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Banol)

118. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

119. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Banol (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

120. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

121. On or about 8/9/1988; 6/14/1989; 6/28/1990; 6/19/1990; 7/14/1990-7/15/1990; 7/22/1990; 7/24/1990; 8/25/1990; 8/21/1990; 7/14/1993; 7/14/2000;

7/14/2000; 7/16/2000; 7/17/2000; 7/18/2000; 8/1/2000; 7/27/05;, and for a substantial period of time after each date, Plaintiff's decedent was exposed to and did take Banol into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

122. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;

- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;

- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 22
Strict Liability

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Banol)

123. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

124. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

125. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

126. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

127. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

128. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

129. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

130. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

131. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant

withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

132. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

133. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 23
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Banol)

134. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

135. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

136. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

137. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 24
Wrongful Death

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Banol)

138. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

139. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have

continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant

- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 25
Survival Claim**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Banol)**

140. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

141. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;

- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 26
Negligence

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Bayleton)

142. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

143. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Bayleton (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

144. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff's Decedent to manufacture, test, design and sell products that were safe for their intended use.

145. On or about 7/12/1988; 7/14/1988; 8/9/1988; 6/19/1990; 6/20/1990; 6/21/1990; 7/16/1991; 8/12/2003; 8/14/2003; 9/12/2003; 9/13/2003; 9/15/2003; 9/16/2003; 9/18/2003; 6/12/2004; 8/3/2004; 8/5/2004; 6/14/05; 6/16/05; 6/17/05; 6/27/05; 6/28/05; 7/12/05; 7/28/05; 8/2/05; 8/3/05, and for a substantial period of time after each date, Plaintiff's decedent was exposed to and did take Bayleton into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

146. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;

- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;

- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 27
Strict Liability

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Bayleton)

147. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

148. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

149. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

150. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

151. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

152. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

153. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

154. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its

pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

155. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

156. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

157. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 28
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Bayleton)

158. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

159. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

160. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

161. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 29
Wrongful Death**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Bayleton)**

162. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

163. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 30
Survival Claim**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Bayleton)**

164. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

165. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 31
Negligence**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Chipco)**

166. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

167. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively "Bayer") is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed,

distributed, recommended, provided instructions for use, sold and promoted the pesticide Chipco (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

168. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

169. On or about 5/11/1988; 5/12/1988; 4/18/1989; 5/21/1990; 4/27/1991; 5/2/1991; 8/31/1991; 6/28/1994; 6/28/1994; 7/28/1994; 6/20/2001; 6/21/2002; 6/23/2002; 6/25/2002; 7/3/2002; 7/4/2002; 7/11/2002; 7/14/2002; 8/1/2002; 8/13/2002; 8/25/2002; 5/27/2004; 5/29/2004; 6/2/2004; 7/5/2004; 7/8/2004; 7/11/2004; 7/20/2004, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Chipco into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

170. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;

- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the

use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;

- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product.
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 32
Strict Liability

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Chipco)**

171. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

172. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

173. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

174. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

175. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

176. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

177. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

178. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

179. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

180. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

181. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 33
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Chipco)

182. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

183. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

184. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

185. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 34
Wrongful Death**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Chipco)**

186. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

187. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of

Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 35
Survival Claim**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Chipco)**

188. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

189. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 36
Negligence**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Dylox)**

190. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

191. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in

their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Dylox (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

192. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

193. On or about 4/30/1990; 5/2/1990; 8/3/1990; 8/3/1990; 8/5/1990; 8/5/1990; 8/6/1990; 9/14/1990; 9/21/1991; 9/22/1991; 10/2/1991; 5/28/1992; 6/1/1992; 7/9/1992; 7/11/1992; 7/15/1992; 8/9/1992; 6/2/1993; 6/5/1993; 6/10/1993; 7/11/1993; 6/9/1994; 6/14/1994; 7/11/1994; 6/29/2002; 6/30/2002; 7/22/2002; 7/23/2002; 7/25/2002; 9/17/2002; 9/19/2002; 8/25/05; 9/14/05, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Dylox into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

194. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;

- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product.
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 37
Strict Liability

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Dylox)**

195. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

196. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

197. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

198. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

199. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

200. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

201. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

202. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

203. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

204. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

205. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 38
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Dylox)

206. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

207. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

208. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

209. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 39
Wrongful Death

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Dylox)

210. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

211. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 40
Survival Claim

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Dylox)

212. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

213. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 41
Negligence

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Merit)

214. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

215. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Merit (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

216. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

217. On or about 5/28/2002; 9/3/2002; 4/10/2003; 4/22/2003; 5/24/05; 6/1/05; 9/7/05; 9/10/05, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Merit into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

218. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 42
Strict Liability

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Merit)

219. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

220. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

221. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

222. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

223. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

224. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

225. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

226. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

227. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

228. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

229. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 43
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Merit)

230. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

231. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

232. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

233. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 44
Wrongful Death

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Merit)**

234. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

235. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 45
Survival Claim

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Merit)

236. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

237. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 46
Negligence**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Morestan)**

238. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

239. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Morestan (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

240. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

241. On or about 4/24/1991, and for a substantial period of time after this date, Plaintiff’s decedent was exposed to and did take Morestan into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

242. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 47
Strict Liability

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Morestan)

243. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

244. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

245. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

246. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

247. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

248. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

249. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

250. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

251. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

252. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

253. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 48
Breach of Warranty

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Morestan)**

254. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

255. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

256. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

257. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 49
Wrongful Death

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Morestan)**

258. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

259. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 50
Survival Claim**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Morestan)**

260. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

261. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 51
Negligence**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prograss and/or Progress)**

262. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

263. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Prograss/Progress (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

264. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

265. On or about 10/30/1989, and for a substantial period of time after that date, Plaintiff’s decedent was exposed to and did take Prograss/Progress into his body

through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

266. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;

- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;

- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 52
Strict Liability

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prograss and/or Progress)**

267. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

268. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

269. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

270. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

271. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the

injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

272. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

273. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

274. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

275. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

276. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

277. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 53
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prograss and/or Progress)

278. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

279. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

280. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

281. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 54
Wrongful Death

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prograss and/or Progress)**

282. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

283. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 55
Survival Claim

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prograss and/or Progress)

284. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

285. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 56
Negligence**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prostar)**

286. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

287. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Prostar (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

288. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

289. On or about 12/1/1988; 12/5/1988; 7/26/1989; 7/30/1994; 7/31/1994, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Prostar into his body through inhalation, ingestion and/or dermal exposure to the

product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

290. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;

- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;

- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 57
Strict Liability

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Prostar)

291. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

292. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

293. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

294. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

295. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the

injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

296. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

297. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

298. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

299. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

300. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

301. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 58
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prostar)

302. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

303. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

304. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

305. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 59
Wrongful Death

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prostar)**

306. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

307. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;

- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 60
Survival Claim

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Prostar)

308. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

309. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 61
Negligence**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Sevin)**

310. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

311. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Sevin (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

312. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

313. On or about 7/14/1990-7/15/1990; 7/18/1990; 5/2/1991; 5/14/1991; 8/22/1991, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Sevin into his body through inhalation, ingestion and/or dermal

exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

314. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;

- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;

- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 62
Strict Liability

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Sevin)

315. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

316. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

317. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

318. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

319. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the

injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

320. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

321. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

322. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

323. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

324. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

325. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 63
Breach of Warranty

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Sevin)

326. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

327. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

328. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

329. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 64
Wrongful Death

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Sevin)**

330. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

331. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 65
Survival Claim

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Sevin)

332. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

333. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 66
Negligence**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Subdue)**

334. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

335. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Subdue (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

336. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 6/28/1988; 6/30/1988; 7/8/1988; 7/20/1988; 7/22/1988; 7/23/1988; 5/13/1989; 5/23/1989; 6/12/1989; 6/28/1989; 7/1/1989; 7/2/1989; 7/3/1989; 7/6/1989; 7/7/1989; 7/17/1989; 7/20/1989; 7/21/1989; 8/1/1989; 8/6/1989; 8/7/1989; 8/11/1989; 8/12/1989; 8/14/1989; 8/16/1989; no date; 8/20/19; 5/7/1990; 5/8/1990; 5/10/1990; 5/25/1990; 5/29/1990; 6/9/1990; 6/15/1990; 6/26/1990; 7/21/1990; 7/21/1990;

7/22/1990; 8/10/1990; 8/27/1990; 8/28/1990; 10/9/1990; 4/9/1991; 4/10/1991; 4/14/1991; 5/25/1991; 5/28/1991; 5/30/1991; 6/13/1991; 6/13/1991; 6/27/1991; 6/29/1991; 7/1/1991; 7/1/1991; 7/2/1991; 7/11/1991; 8/29/1991; 8/29/1991; 4/30/1992; 7/7/1992; 7/22/1992; 4/28/1993; 6/8/1993; 6/25/1993; 7/12/1993; 7/14/1993; 7/15/1993; 8/5/1993; 8/27/1993; 9/1/1993; 9/13/1993; 7/1/1994; 7/5/1994; 8/29/1994; 10/25/1994; 11/18/1994; 3/25/1997; 5/9/1997; 6/3/1997; 6/18/2000; 6/19/2000; 6/29/2000; 6/30/2000; 7/1/2000; 7/2/2000; 8/15/2000; 8/16/2000; 8/17/2000; 9/8/2000; 9/9/2000; 4/9/2001; 6/28/2001; 7/16/2001; 7/17/2001; 7/23/2001; 7/24/2001; 7/25/2001; 8/2/2001; 8/7/2001; 8/8/2001; 8/9/2001; 8/9/2001; 8/13/2001; 8/16/2001; 6/27/2002; 6/29/2002; 6/30/2002; 7/11/2002; 7/14/2002; 7/15/2002; 7/16/2002; 7/1/2003; 6/29/2004; 6/30/2004; 7/1/2004; 7/2/2004; 9/23/2004; 9/28/2004; 10/7/2004; 7/4/05; 7/14/05; 7/16/05; 7/17/05; 8/2/05; 8/3/05; 8/11/05;, and for a substantial period of time after each date, Plaintiff's decedent was exposed to and did take Subdue into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

337. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;

- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 67
Strict Liability

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Subdue)**

338. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

339. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

340. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

341. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

342. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

343. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

344. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

345. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

346. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

347. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

348. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 68
Breach of Warranty

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Subdue)**

349. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

350. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

351. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

352. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 69
Wrongful Death**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Subdue)**

353. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

354. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 70
Survival Claim

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Subdue)

355. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

356. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 71
Negligence

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Tempo)**

357. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

358. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Tempo (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

359. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

360. On or about 4/24/1991, and for a substantial period of time after that date, Plaintiff’s decedent was exposed to and did take Tempo into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

361. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;

- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 72
Strict Liability

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Tempo)**

362. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

363. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

364. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

365. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

366. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

367. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

368. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

369. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

370. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

371. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

372. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 73
Breach of Warranty

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Tempo)**

373. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

374. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

375. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

376. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 74
Wrongful Death**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Tempo)**

377. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

378. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 75
Survival Claim

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Tempo)**

379. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

380. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 76
Negligence

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Turcam)**

381. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

382. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (hereinafter collectively “Bayer”) is a Pennsylvania Corporation with offices located at 100 Bayer Road, Pittsburgh, PA 15205, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Turcam (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

383. At all times relevant hereto, Bayer had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

384. On or about 9/20/1990; 10/17/1990; 10/17/1990; 10/19/1990; 9/14/1990; 7/6/1991; 7/6/1991; 7/7/1991; 7/9/1991; 7/26/1991; 7/29/1991; 8/5/1991; 8/7/1991; 8/12/1991; 8/20/1991; 8/22/1991; 8/24/1991; 9/16/1991; 9/19/1991;, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Turcam into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

385. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 77
Strict Liability

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Turcam)

386. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

387. When Bayer sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

388. At all times relevant hereto, Bayer knew that its product was defective and that users of its product would suffer serious health problems including AML.

389. At all relevant times, Bayer's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

390. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

391. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

392. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

393. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

394. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

395. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

396. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 78
Breach of Warranty**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Turcam)**

397. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

398. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

399. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

400. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 79
Wrongful Death**

**Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right
(Turcam)**

401. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

402. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;

- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 80
Survival Claim

Walsh v. Bayer Corporation d/b/a Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., and/or Bayer CropScience, L.P., and Bayer CropScience Holding, Inc., in their own right (Turcam)

403. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

404. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 81
Negligence**

**Walsh v. Biosafe Systems, LLC
(Zero Tol)**

405. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

406. Biosafe Systems, LLC (hereinafter “Biosafe”) is a Connecticut Corporation located at 22 Meadow Street, East Hartford, CT 06108 and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Zero Tol (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

407. At all times relevant hereto, Biosafe had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

408. On or about 5/31/2003, and for a substantial period of time after that date, Plaintiff’s decedent was exposed to and did take Zero Tol into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

409. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 82
Strict Liability

Walsh v. Biosafe Systems, LLC
(Zero Tol)

410. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

411. When Biosafe sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

412. At all times relevant hereto, Biosafe knew that its product was defective and that users of its product would suffer serious health problems including AML.

413. At all relevant times, Biosafe's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

414. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

415. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

416. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

417. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

418. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

419. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

420. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 83
Breach of Warranty**

**Walsh v. Biosafe Systems, LLC
(Zero Tol)**

421. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

422. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

423. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

424. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 84
Wrongful Death**

**Walsh v. Biosafe Systems, LLC
(Zero Tol)**

425. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

426. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 85
Survival Claim**

**Walsh v. Biosafe Systems, LLC
(Zero Tol)**

427. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

428. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 86
Negligence

Walsh v. Chemtura Corporation
(Turfcide 400 – Flowable Turf Fungicide)

429. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

430. Chemtura Corporation (hereinafter “Chemtura”) is a Middlebury Corporation with offices at 199 Benson Road, Middlebury, CT 06749, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Turfcide 400 – Flowable Turf Fungicide (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

431. At all times relevant hereto, Chemtura had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

432. On or about 3/1/2004; 3/7/2004, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Turfcide 400 – Flowable Turf Fungicide into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

433. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;

- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 87
Strict Liability

Walsh v. Chemtura Corporation
(Turfcide 400 – Flowable Turf Fungicide)

434. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

435. When Chemtura sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

436. At all times relevant hereto, Chemtura knew that its product was defective and that users of its product would suffer serious health problems including AML.

437. At all relevant times, Chemtura's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

438. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

439. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and

bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

440. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

441. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

442. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

443. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

444. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 88
Breach of Warranty

Walsh v. Chemtura Corporation
(Turfcide 400 – Flowable Turf Fungicide)

445. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

446. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

447. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

448. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 89
Wrongful Death

Walsh v. Chemtura Corporation
(Turfcide 400 – Flowable Turf Fungicide)

449. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

450. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 90
Survival Claim**

**Walsh v. Chemtura Corporation
(Turficide 400 – Flowable Turf Fungicide)**

451. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

452. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 91
Negligence**

**Walsh v. Cleary Chemical Corporation
(3336)**

453. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

454. Cleary Chemical Corporation (hereinafter “Cleary”) is a New Jersey Corporation with offices located at 178 Ridge Road, Dayton, NJ 08810, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide 3336 (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

455. At all times relevant hereto, Cleary had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

456. On or about 7/25/2001; 5/20/2002; 8/10/2002, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take 3336 into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

457. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 92
Strict Liability

Walsh v. Cleary Chemical Corporation
(3336)

458. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

459. When Cleary sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

460. At all times relevant hereto, Cleary knew that its product was defective and that users of its product would suffer serious health problems including AML.

461. At all relevant times, Cleary's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

462. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

463. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

464. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

465. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

466. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

467. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

468. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 93
Breach of Warranty

Walsh v. Cleary Chemical Corporation
(3336)

469. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

470. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

471. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

472. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 94
Wrongful Death

Walsh v. Cleary Chemical Corporation
(3336)

473. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

474. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 95
Survival Claim**

**Walsh v. Cleary Chemical Corporation
(3336)**

475. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

476. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 96
Negligence**

**Walsh v. Dow Agrosciences LLC
(Confront)**

477. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

478. Dow Agrosciences LLC (hereinafter “Dow”) is a Indiana Corporation with offices located at 9330 Zionsville Road, Indianapolis, IN 46268, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Confront (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

479. At all times relevant hereto, Dow had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

480. On or about 10/2/2002; 10/8/2002; 10/9/2002, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Confront into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

481. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 97
Strict Liability

Walsh v. Dow Agrosciences LLC
(Confront)

482. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

483. When Dow sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

484. At all times relevant hereto, Dow knew that its product was defective and that users of its product would suffer serious health problems including AML.

485. At all relevant times, Dow's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

486. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

487. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

488. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

489. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

490. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

491. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

492. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 98
Breach of Warranty**

**Walsh v. Dow Agrosciences LLC
(Confront)**

493. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

494. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

495. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

496. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 99
Wrongful Death**

**Walsh v. Dow Agrosciences LLC
(Confront)**

497. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

498. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 100
Survival Claim**

**Walsh v. Dow Agrosciences LLC
(Confront)**

499. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

500. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 101
Negligence

Walsh v. Dow Agrosciences LLC
(Dithane)

501. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

502. Dow Agrosciences LLC (hereinafter “Dow”) is a Indiana Corporation with offices located at 9330 Zionsville Road, Indianapolis, IN 46268, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Confront (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

503. At all times relevant hereto, Dow had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

504. On or about 7/22/1988; 7/26/1988; 7/30/1988; 5/11/1990; 5/12/1990; 6/8/1990; 6/11/1990; 8/7/1990; 8/14/1990; 8/16/1990; 11/5/1990; 8/22/1992, 6/23/1989; 6/24/1989; 4/15/1992; 4/22/1992, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Dithane into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

505. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 102
Strict Liability

Walsh v. Dow Agrosiences LLC
(Dithane)

506. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

507. When Dow sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

508. At all times relevant hereto, Dow knew that its product was defective and that users of its product would suffer serious health problems including AML.

509. At all relevant times, Dow's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

510. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

511. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

512. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

513. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

514. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

515. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

516. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 103
Breach of Warranty**

**Walsh v. Dow Agrosciences LLC
(Dithane)**

517. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

518. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

519. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

520. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 104
Wrongful Death**

**Walsh v. Dow Agrosciences LLC
(Dithane)**

521. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

522. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 105
Survival Claim**

**Walsh v. Dow Agrosiences LLC
(Dithane)**

523. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

524. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 106
Negligence

Walsh v. Dow Agrosciences LLC
(Dursban)

525. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

526. Dow Agrosciences LLC (hereinafter “Dow”) is a Indiana Corporation with offices located at 9330 Zionsville Road, Indianapolis, IN 46268, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Confront (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

527. At all times relevant hereto, Dow had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

528. On or about 5/13/1988; 5/14/1988; 6/4/1988; 6/5/1988; 6/6/1988; 6/21/1988, 7/8/1988; 8/1/1988; 8/2/1988; 8/21/1988; 9/20/1988; 6/12/1989; 7/15/1989; 7/17/1989; 8/1/1989; 8/6/1989; 8/7/1989; 8/20/1989; 10/10/1989; 10/16/1989; 6/8/1990; 6/11/1990; 6/25/1991; 7/10/1990; 7/10/1990; 7/11/1990; 8/21/1990; 9/12/1990; 6/1/1991; 6/2/1991; 6/10/1991; 6/13/1991; 6/13/1991; 7/1/1991; 7/1/1991; 7/2/1991; 7/27/1991; 8/26/1991; 8/27/1991; 6/17/1992; 6/18/1992; 6/24/1992; 7/13/1992; 7/22/1992; 9/14/1992; 5/31/1993; 6/1/1993; 7/20/1993; 7/29/1993; 8/4/1993; 8/5/1993; 7/12/1993; 7/13/1993; 9/17/1993; 9/21/1993; 9/25/1993; 5/7/1994; 5/8/1994; 5/10/1994; 6/28/1994;

7/29/1994; 6/27/2001; 6/28/2001; 7/16/2001; 8/2/2001; 8/5/2001; 8/8/2001; 8/9/2001; 8/16/2001; 6/27/2002;, and for a substantial period of time after each date, Plaintiff's decedent was exposed to and did take Dursban into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

529. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;

- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;

- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 107
Strict Liability**

**Walsh v. Dow Agrosciences LLC
(Dursban)**

530. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

531. When Dow sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

532. At all times relevant hereto, Dow knew that its product was defective and that users of its product would suffer serious health problems including AML.

533. At all relevant times, Dow's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

534. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

535. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

536. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

537. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

538. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

539. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence

of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

540. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 108
Breach of Warranty

Walsh v. Dow Agrosiences LLC
(Dursban)

541. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

542. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

543. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

544. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 109
Wrongful Death

Walsh v. Dow Agrosociences LLC
(Dursban)

545. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

546. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 110
Survival Claim**

**Walsh v. Dow Agrosiences LLC
(Dursban)**

547. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

548. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 111
Negligence**

**Walsh v. Dow Agrosciences LLC
(Weedone MCPP)**

549. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

550. Dow Agrosciences L.L.C. (hereinafter “Dow”) is a Indianapolis Corporation with offices located at 9330 Zionsville Road, Indianapolis, IN 46268, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Weedone MCPP (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

551. At all times relevant hereto, Dow had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

552. On or about 4/8/2003; 4/23/2004, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Weedone MCPP into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

553. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 112
Strict Liability

Walsh v. Dow Agrosiences LLC
(Weedone MCPP)

554. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

555. When Dow sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

556. At all times relevant hereto, Dow knew that its product was defective and that users of its product would suffer serious health problems including AML.

557. At all relevant times, Dow's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

558. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

559. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

560. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

561. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

562. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

563. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

564. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 113
Breach of Warranty

Walsh v. Dow Agrosiences LLC
(Weedone MCPP)

565. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

566. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

567. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

568. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 114
Wrongful Death

Walsh v. Dow Agrosociences LLC
(Weedone MCPP)

569. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

570. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 115
Survival Claim**

**Walsh v. Dow Agrosciences LLC
(Weedone MCPP)**

571. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

572. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 116
Negligence

Walsh v. E.I. Du Pont de Nemours and Co., Inc.
(Tersan 1991)

573. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

574. E.I. Du Pont de Nemours and Co., Inc. (hereinafter “Du Pont”) is a Delaware Corporation with offices located at 1007 Market St. Wilmington, DE 19898, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Tersan 1991 (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

575. At all times relevant hereto, Du Pont had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

576. On or about 4/5/1988; 6/2/1988; 6/21/1988; 7/7/1988; 7/20/1988; 7/26/1988; 7/27/1988; 7/28/1988; 7/30/1988; 8/1/1988; 8/2/1988; 8/8/1988; 8/11/1988; 8/18/1988; 8/21/1988; 8/23/1988; 9/3/1988; 9/20/1988; 11/15/1988; 5/5/1989; 5/6/1989; 6/14/1989; 6/19/1989; 6/20/1989; 6/21/1989; 7/7/1989; 7/13/1989; 7/17/1989; 7/20/1989; 7/21/1989; 8/1/1989; 8/11/1989; 8/12/1989; 8/14/1989; 8/22/1989; 8/20/1989; 5/25/1990; 5/29/1990; 6/19/1990; 6/20/1990; 6/21/1990; 6/23/1990; 6/25/1990; 6/26/1990;

6/29/1990; 7/3/1990; 7/14/1990-7/15/1990; 7/19/1991; 7/21/1990; 7/22/1990; 7/23/1990;
7/24/1990; 7/30/1990; 8/1/1990; 8/16/1990; 8/20/1990; 8/25/1990; 8/21/1990; 10/9/1990;
8/31/1990; 9/3/1990; 6/6/1991; 6/19/1991; 6/22/1991; 6/24/1991; 6/25/1991; 7/6/1991;
7/6/1991; 6/16/1992; 6/17/1992; 6/18/1991; 6/24/1992; 6/26/1992; 7/10/1992; 7/11/1992;
7/12/1992; 7/19/1992; 2/9/1993; 7/11/1993; 7/19/1993; 7/19/1993; 7/20/1993; 7/22/1993;
7/24/1993; 7/24/1993; 7/29/1993; 8/17/1993; 8/29/1993; 8/31/1993; 9/1/1993; 9/2/1993;
9/3/1993; 5/27/1994; 6/7/1994; 6/9/1994; 6/14/1994; 6/22/1994; 6/30/1994; 7/2/1994;
7/6/1994; 7/11/1994; 7/14/1994; 7/15/1994; 7/22/1994; 7/23/1994; 7/27/1994; 7/29/1994;
8/10/1994; 6/28/1992; 6/29/1992; 6/29/1992; 7/4/1992; 7/19/1992; 7/22/1992; 7/23/1992;
7/24/1992; 8/8/1992; 8/9/1992; 3/25/1993; 5/13/1993; 5/14/1993; 6/2/1993; 6/5/1993;
6/8/1993; 6/10/1993; 6/18/1993; 6/24/1993; 7/1/1993; 7/8/1993; 7/9/1993; 3/23/1994;,
and for a substantial period of time after each date, Plaintiff's decedent was exposed to
and did take Tersan 1991 into his body through inhalation, ingestion and/or dermal
exposure to the product in the course of using and applying said product on golf courses
in accordance with manufacturer's instructions.

577. Plaintiff's Decedent's injuries and damages were caused by and were the
direct and proximate result of its breach of duty and negligence in any or all of the
following respects:

- a. In manufacturing and/or selling or distributing a product which was in a
defective condition;
- b. In failing to inspect the product to discover the defective condition;

- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 117
Strict Liability

Walsh v. E.I. Du Pont de Nemours and Co., Inc.
(Tersan 1991)

578. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

579. When Du Pont sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

580. At all times relevant hereto, Du Pont knew that its product was defective and that users of its product would suffer serious health problems including AML.

581. At all relevant times, Du Pont's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

582. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

583. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

584. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

585. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

586. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

587. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

588. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 118
Breach of Warranty

Walsh v. E.I. Du Pont de Nemours and Co., Inc.
(Tersan 1991)

589. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

590. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

591. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

592. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 119
Wrongful Death

Walsh v. E.I. Du Pont de Nemours and Co., Inc.
(Tersan 1991)

593. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

594. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 120
Survival Claim

Walsh v. E.I. Du Pont de Nemours and Co., Inc.
(Tersan 1991)

595. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

596. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 121
Negligence

Walsh v. G.B. Biosciences Corporation
(ChloroStar)

597. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

598. G.B. Biosciences Corporation (hereinafter “G.B.”) is a North Carolina Corporation with offices located at 410 Swing Road, Greensboro, NC 27419, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide ChloroStar (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

599. At all times relevant hereto, G.B. had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

600. On or about 8/19/1999; 8/21/1999; 5/20/2000, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take ChloroStar into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

601. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;

- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 122
Strict Liability

Walsh v. G.B. Biosciences Corporation
(ChloroStar)

602. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

603. When G.B. sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

604. At all times relevant hereto, G.B. knew that its product was defective and that users of its product would suffer serious health problems including AML.

605. At all relevant times, G.B.'s pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

606. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

607. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and

bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

608. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

609. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

610. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

611. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

612. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 123
Breach of Warranty

Walsh v. G.B. Biosciences Corporation
(ChloroStar)

613. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

614. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

615. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

616. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 124
Wrongful Death

Walsh v. G.B. Biosciences Corporation
(ChloroStar)

617. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

618. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 125
Survival Claim

Walsh v. G.B. Biosciences Corporation
(ChloroStar)

619. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

620. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 126
Negligence

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco 32-5-7)

621. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

622. John Deere Landscaping, Inc., successor to Lesco, Inc. (hereinafter “Deere”) is an Illinois Corporation with offices located at One John Deere Place, Moline, IL 61265, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Lesco 32-5-7 (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

623. At all times relevant hereto, Deere had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 7/12/2001; 7/18/2001; 7/3/2002; 7/4/2002; 8/1/2002;, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Lesco 32-5-7 into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

624. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;

- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 127
Strict Liability

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco 32-5-7)

625. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

626. When Deere sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

627. At all times relevant hereto, Deere knew that its product was defective and that users of its product would suffer serious health problems including AML.

628. At all relevant times, Deere's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

629. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

630. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

631. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

632. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

633. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

634. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

635. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 128
Breach of Warranty

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco 32-5-7)

636. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

637. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

638. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

639. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 129
Wrongful Death

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco 32-5-7)

640. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

641. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 130
Survival Claim

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco 32-5-7)

642. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

643. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 131
Negligence

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Battle)

644. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

645. John Deere Landscaping, Inc., successor to John Deere Landscaping, Inc., successor to Lesco, Inc. (hereinafter “Deere”) is an Illinois Corporation with offices located at One John Deere Place, Moline, IL 61265, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Lesco Battle (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

646. At all times relevant hereto, Deere had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

647. On or about 7/24/2003; 6/29/2004; 6/30/2004; 7/1/2004; 7/2/2004;, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Lesco Battle into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

648. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;

- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 132
Strict Liability

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Battle)

649. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

650. When Deere sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

651. At all times relevant hereto, Deere knew that its product was defective and that users of its product would suffer serious health problems including AML.

652. At all relevant times, Deere's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

653. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

654. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and

bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

655. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

656. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

657. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

658. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

659. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 133
Breach of Warranty

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Battle)

660. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

661. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

662. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

663. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 134
Wrongful Death

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Battle)

664. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

665. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 135
Survival Claim

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Battle)

666. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

667. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 136
Negligence

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Three Way Selective)

668. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

669. John Deere Landscaping, Inc., successor to Lesco, Inc. (hereinafter “Deere”) is an Illinois Corporation with offices located at One John Deere Place, Moline, IL 61265, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Lesco Three Way Selective (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

670. At all times relevant hereto, Deere had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

671. On or about 4/21/05; 4/26/05; 4/28/05;, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Lesco Three Way Selective into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

672. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;

- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 137
Strict Liability

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Three Way Selective)

673. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

674. When Deere sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

675. At all times relevant hereto, Deere knew that its product was defective and that users of its product would suffer serious health problems including AML.

676. At all relevant times, Deere's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

677. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

678. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and

bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

679. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

680. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

681. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

682. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

683. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 138
Breach of Warranty

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Three Way Selective)

684. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

685. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

686. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

687. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 139
Wrongful Death

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Three Way Selective)

688. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

689. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 140
Survival Claim

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Lesco Three Way Selective)

690. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

691. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 141
Negligence

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Manicure)

692. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

693. John Deere Landscaping, Inc., successor to Lesco, Inc. (hereinafter “Deere”) is an Illinois Corporation with offices located at One John Deere Place, Moline, IL 61265, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Manicure (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

694. At all times relevant hereto, Deere had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 9/9/1999; 5/28/2000; 9/18/2001; 5/20/2002; 6/11/2002; 7/2/2002; 7/11/2002; 7/15/2002; 7/16/2002; 7/17/2002; 8/2/2002; 8/24/2002; 8/25/2002; 9/4/2002; 9/5/2002 ;9/7/2002; 9/9/2002; 7/22/2004; 8/2/2000; 8/4/2000; 8/3/2004; 8/5/2004; 6/20/2001; 9/1/2001; 9/2/2001; 6/21/2002; 6/23/2002; 6/25/2002;, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Manicure into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

695. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;

- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 142
Strict Liability

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Manicure)

696. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

697. When Lesco sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

698. At all times relevant hereto, Deere knew that its product was defective and that users of its product would suffer serious health problems including AML.

699. At all relevant times, Deere's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

700. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

701. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

702. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

703. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

704. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

705. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

706. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 143
Breach of Warranty

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Manicure)

707. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

708. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

709. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

710. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 144
Wrongful Death

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Manicure)

711. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

712. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 145
Survival Claim

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Manicure)

713. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

714. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 146
Negligence

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Prodigy)

715. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

716. John Deere Landscaping, Inc., successor to Lesco, Inc. (hereinafter “Deere”) is an Illinois Corporation with offices located at One John Deere Place, Moline, IL 61265, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Prodigy (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

717. At all times relevant hereto, Deere had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 7/8/1994; 7/16/05; 7/17/05;, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Prodigy into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

718. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;

- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 147
Strict Liability

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Prodigy)

719. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

720. When Deere sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

721. At all times relevant hereto, Deere knew that its product was defective and that users of its product would suffer serious health problems including AML.

722. At all relevant times, Deere's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

723. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

724. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

725. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

726. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

727. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

728. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

729. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 148
Breach of Warranty

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Prodigy)

730. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

731. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

732. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

733. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 149
Wrongful Death

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Prodigy)

734. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

735. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 150
Survival Claim

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Prodigy)

736. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

737. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 151
Negligence

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Twosome)

738. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

739. John Deere Landscaping, Inc., successor to Lesco, Inc. (hereinafter “Deere”) is an Ohio Company and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Twosome (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

740. At all times relevant hereto, Deere had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 8/21/1990; 9/18/1990; 9/20/1990;, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Twosome into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

741. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;

- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 152
Strict Liability

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Twosome)

742. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

743. When Deere sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

744. At all times relevant hereto, Deere knew that its product was defective and that users of its product would suffer serious health problems including AML.

745. At all relevant times, Deere's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

746. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

747. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

748. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

749. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

750. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

751. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

752. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 153
Breach of Warranty

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Twosome)

753. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

754. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

755. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

756. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 154
Wrongful Death

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Twosome)

757. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

758. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 155
Survival Claim

Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.
(Twosome)

759. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

760. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 156
Negligence

Walsh v. Nufarm Americas, Inc.
(Millennium)

761. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

762. Nufarm Americas, Inc., (hereinafter “Nufarm”) is an Illinois Corporation with offices located at 150 Harvester Drive, Suite 200, Burr Ridge, IL 60527, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Millennium (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

763. At all times relevant hereto, Nufarm had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 9/21/1999; 9/22/1999; 9/23/1999; 9/24/1999; 9/28/1999; and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Millennium into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

764. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;

- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 157
Strict Liability

Walsh v. Nufarm Americas, Inc.
(Millennium)

765. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

766. When Nufarm sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

767. At all times relevant hereto, Nufarm knew that its product was defective and that users of its product would suffer serious health problems including AML.

768. At all relevant times, Nufarm's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

769. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

770. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

771. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

772. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

773. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

774. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

775. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 158
Breach of Warranty

Walsh v. Nufarm Americas, Inc.
(Millennium)

776. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

777. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

778. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

779. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 159
Wrongful Death

Walsh v. Nufarm Americas, Inc.
(Millennium)

780. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

781. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 160
Survival Claim

Walsh v. Nufarm Americas, Inc.
(Millennium)

782. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

783. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 161
Negligence

Walsh v. Regal Chemical Co.
(Consyst WDG)

784. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

785. Regal Chemical Co. (hereinafter “Regal”) is a Georgia Corporation with offices located at 600 Branch Street, Alpharetta, GA 30004, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Consyst WDG (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

786. At all times relevant hereto, Regal had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

787. On or about 6/28/1994, and for a substantial period of time after that date, Plaintiff’s decedent was exposed to and did take Consyst WDG into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

788. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;

- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 162
Strict Liability

Walsh v. Regal Chemical Co.
(Consyst WDG)

789. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

790. When Regal sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

791. At all times relevant hereto, Regal knew that its product was defective and that users of its product would suffer serious health problems including AML.

792. At all relevant times, Regal's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

793. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

794. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

795. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

796. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

797. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

798. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

799. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 163
Breach of Warranty

Walsh v. Regal Chemical Co.
(Consyst WDG)

800. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

801. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

802. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

803. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 164
Wrongful Death

Walsh v. Regal Chemical Co.
(Consyst WDG)

804. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

805. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 165
Survival Claim

Walsh v. Regal Chemical Co.
(Consyst WDG)

806. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

807. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 166
Negligence

Walsh v. Scotts-Sierra Crop Protection Co.
(Calo-Clor/Calo-Gran)

808. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

809. The Scotts-Sierra Crop protection Co., (hereinafter “Scotts”) is an Ohio Corporation with offices located at 14111 Scottslawn Road, Marysville, Ohio 43041, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Calo-Clor/Calo-Gran (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

810. At all times relevant hereto, Scotts had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

811. On or about 12/3/1991, and for a substantial period of time after that date, Plaintiff’s decedent was exposed to and did take Calo-Clor/Calo-Gran into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

812. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;

- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;

- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 167
Strict Liability

Walsh v. Scotts-Sierra Crop Protection Co.
(Calo-Clor/Calo-Gran)

813. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

814. When Scotts sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

815. At all times relevant hereto, Scott sold or distributed its product to Plaintiff's decedent it knew that its product was defective and that users of its product would suffer serious health problems including AML.

816. At all relevant times, Scotts's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

817. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

818. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and

bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

819. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

820. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

821. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

822. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

823. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 168
Breach of Warranty

Walsh v. Scotts-Sierra Crop Protection Co.
(Calo-Clor/Calo-Gran)

824. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

825. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

826. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

827. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 169
Wrongful Death

Walsh v. Scotts-Sierra Crop Protection Co.
(Calo-Clor/Calo-Gran)

828. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

829. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 170
Survival Claim

Walsh v. Scotts-Sierra Crop Protection Co.
(Calo-Clor/Calo-Gran)

830. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

831. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 171
Negligence

Walsh v. Scotts-Sierra Crop Protection Co.
(Fungo)

832. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

833. Scotts-Sierra Crop Protection Co. (hereinafter “Scotts”) is an Ohio Corporation with offices located at 14111 Scottslawn Road, Marysville, Ohio 43041, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Fungo (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

834. At all times relevant hereto, Scotts had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

835. On or about 5/18/1991; 5/30/1991; 5/30/1991; 6/6/1991; 6/7/1991; 6/8/1991; 6/9/1991; 6/10/1991; 7/6/1991; 7/7/1991; 7/9/1991; 7/15/1991; 7/16/1991; 7/17/1991; 7/18/1991; 7/20/1991; 7/21/1991; 7/25/1991; 7/26/1991; 7/27/1991; 7/27/1991; 7/29/1991; 7/30/1991; 8/6/1991; 8/7/1991; 8/8/1991; 8/10/1991; 8/12/1991; 8/13/1991; 8/14/1991; 8/29/1991; 9/1/1991; 9/11/1991; 3/31/1992; 7/9/1992; 8/20/1992; 8/21/1992; 8/22/1992; 8/23/1992; 11/30/1992; 12/1/1992, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Fungo into his body through inhalation, ingestion and/or dermal exposure to the product in the

course of using and applying said product on golf courses in accordance with manufacturer's instructions.

836. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;

- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;

- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 172
Strict Liability

Walsh v. Scotts-Sierra Crop Protection Co.
(Fungo)

837. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

838. When Scotts sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

839. When Scott sold or distributed its product to Plaintiff's decedent it knew that its product was defective and that users of its product would suffer serious health problems including AML.

840. At all relevant times, Scotts's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

841. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the

injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

842. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

843. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

844. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

845. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

846. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

847. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 173
Breach of Warranty**

**Walsh v. Scotts-Sierra Crop Protection Co.
(Fungo)**

848. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

849. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

850. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

851. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 174
Wrongful Death

Walsh v. Scotts-Sierra Crop Protection Co.
(Fungo)

852. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

853. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to

provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 175
Survival Claim**

**Walsh v. Scotts-Sierra Crop Protection Co.
(Fungo)**

854. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

855. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;

d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 176
Negligence**

**Walsh v. Scotts-Sierra Crop Protection Co.
(K-O-G)**

856. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

857. Scotts-Sierra Crop Protection Co. (hereinafter “Scotts”) is an Ohio Corporation with offices located at 14111 Scottslawn Road, Marysville, OH 43041, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide K-O-G (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

858. At all times relevant hereto, Scotts had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

859. On or about 9/28/1992; 9/30/1992, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take K-O-G into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

860. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 177
Strict Liability

Walsh v. Scotts-Sierra Crop Protection Co.
(K-O-G)

861. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

862. When Scotts sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

863. When Scott sold or distributed its product to Plaintiff's decedent it knew that its product was defective and that users of its product would suffer serious health problems including AML.

864. At all relevant times, Scotts's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

865. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

866. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

867. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

868. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

869. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

870. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

871. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 178
Breach of Warranty

Walsh v. Scotts-Sierra Crop Protection Co.
(K-O-G)

872. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

873. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

874. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

875. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 179
Wrongful Death

Walsh v. Scotts-Sierra Crop Protection Co.
(K-O-G)

876. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

877. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to

provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 180
Survival Claim**

**Walsh v. Scotts-Sierra Crop Protection Co.
(K-O-G)**

878. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

879. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;

d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 181
Negligence**

**Walsh v. Syngenta Crop Protection, Inc., and Dow Agrosciences LLC
(Banner Maxx)**

880. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

881. Syngenta Crop Protection, Inc., is a Corporation with offices located in Greensboro, North Carolina 27409, and Dow Agrosciences L.L.C. is an Indiana corporation with offices located at 9330 Zionsville Road, Indianapolis, IN 46268, (hereinafter collectively “Syngenta/Dow”) and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Banner Maxx (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

882. At all times relevant hereto, Syngenta/Dow had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

883. On or about 6/17/1988; 7/8/1988; 8/11/1988; 3/31/1989; 4/2/1989; 5/26/1989; 5/28/1989; 6/20/1989; 6/28/1989; 8/6/1989; 8/7/1989; 8/11/1989; 8/12/1989; 8/14/1989; 9/8/1989; 5/3/1990; 5/4/1990; 6/9/1990; 6/15/1990; 7/10/1990; 7/21/1990; 7/23/1990; 7/30/1990; 8/1/1990; 8/2/1990; 8/6/1990; 8/10/1990; 8/14/1990; 10/9/1990;

4/9/1991; 4/10/1991; 4/14/1991; 5/2/1991; 5/9/1991; 6/13/1991; 6/13/1991; 6/29/1991;
7/1/1991; 7/2/1991; 7/15/1991; 7/27/1991; 7/29/1991; 8/5/1991; 8/6/1991; 8/7/1991;
8/20/1991; 8/26/1991; 8/29/1991; 9/11/1991; 3/27/1991; 3/31/1992; 4/20/1992;
5/20/1992; 5/21/1992; 7/10/1992; 7/13/1992; 7/30/1992; 7/31/1992; 9/14/1992;
11/30/1992; 12/1/1992; 4/28/1993; 5/30/1993; 5/31/1993; 6/1/1993; 6/25/1993;
7/11/1993; 7/15/1993; 7/20/1993; 8/5/1993; 8/17/1993; 8/31/1993; 9/2/1993; 9/3/1993;
9/13/1993; 5/16/1994; 6/7/1994; 7/1/1994; 7/11/1994; 7/21/1994; 7/27/1994; 8/29/1994;
5/28/2000; 8/1/2000; 6/20/2001; 6/21/2001; 7/17/2001; 9/20/2002; 9/21/2002; 9/22/2002;
11/22/2002; 7/1/2003; 7/5/2003; 7/17/2003; 7/8/2004; 7/11/2004; 7/20/2004; 7/22/2004;,
and for a substantial period of time after each date, Plaintiff's decedent was exposed to
and did take Banner Maxx into his body through inhalation, ingestion and/or dermal
exposure to the product in the course of using and applying said product on golf courses
in accordance with manufacturer's instructions.

884. Plaintiff's Decedent's injuries and damages were caused by and were the
direct and proximate result of its breach of duty and negligence in any or all of the
following respects:

- a. In manufacturing and/or selling or distributing a product which was in a
defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the
defective condition of which the defendant was aware or in the exercise of
reasonable care should have been aware;

- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the

use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;

- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 182
Strict Liability

Walsh v. Walsh v. Syngenta Crop Protection, Inc., and Dow Agrosiences LLC
(Banner Maxx)

885. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

886. When Syngenta/Dow sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

887. At all times relevant hereto, Syngenta/Dow knew that its product was defective and that users of its product would suffer serious health problems including AML.

888. At all relevant times, Syngenta/Dow's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

889. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

890. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and

bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

891. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

892. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

893. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

894. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

895. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 183
Breach of Warranty

Walsh v. Walsh v. Syngenta Crop Protection, Inc., and Dow Agrosiences LLC
(Banner Maxx)

896. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

897. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

898. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

899. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 184
Wrongful Death

Walsh v. Walsh v. Syngenta Crop Protection, Inc. and Dow Agrosiences LLC
(Banner Maxx)

900. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

901. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 185
Survival Claim

Walsh v. Walsh v. Syngenta Crop Protection, Inc., and Dow Agrosiences LLC
(Banner Maxx)

902. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

903. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 186

Negligence

Walsh v. Syngenta Crop Protection, Inc. (Daconil)

904. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

905. Syngenta Crop Protection, Inc., (hereinafter “Syngenta”) are Corporations with offices located in Greensboro, North Carolina 27409, and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Daconil (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

906. At all times relevant hereto, Syngenta had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

907. On or about 4/22/1988; 4/23/1988; 5/13/1988; 5/14/1988; 6/2/1988; 6/28/1988; 6/30/1988; 7/22/1988; 7/23/1988; 7/26/1988; 8/8/1988; 8/18/1988; 8/26/1988; 9/3/1988; 10/3/1988; 4/30/1989; 5/26/1989; 6/3/1989; 6/5/1989; 6/12/1989; 6/14/1989; 6/23/1989; 7/1/1989; 7/2/1989; 7/6/1989; 7/7/1989; 7/9/1989; 7/10/1989; 7/15/1989; 8/29/1989; 9/2/1989; 10/10/1989; 10/16/1989; 5/11/1990; 5/12/1990; 6/8/1990; 6/11/1990; 7/14/1990-7/15/1990; 7/14/1990-7/15/1990; 7/18/1990; 7/19/1990; 8/3/1990; 8/4/1990; 8/5/1990; 8/6/1990; 8/7/1990; 8/14/1990; 9/20/1990; 10/17/1990; 10/17/1990; 10/19/1990; 8/30/1990; 9/12/1990; /23/1991; 11/5/1990; 9/14/1990; 9/14/1990; 4/24/1991; 5/14/1991; 5/25/1991; 5/26/1991; 5/27/1991; 5/28/1991; 6/1/1991; 6/2/1991; 6/10/1991; 6/27/1991; 7/1/1991; 7/8/1991; 7/9/1991; 7/11/1991; 7/20/1991; 7/21/1991; 4/22/1991; 7/24/1991; 7/25/1991; 7/27/1991; 8/8/1991; 8/13/1991; 8/14/1991; 8/20/1991; 8/22/1991;

8/24/1991; 8/26/1991; 8/27/1991; 8/30/1991; 8/31/1991; 11/30/1991; 12/3/1991;
3/3/1992; 3/27/1992; 3/31/1992; 4/20/1992; 4/30/1992; 6/9/1992; 6/10/1992; 6/11/1992;
6/24/1992; 6/28/1992; 7/13/1992; 7/14/1992; 7/15/1992; 7/18/1992; 7/19/1992;
7/31/1992; 8/9/1992; 8/15/1992; 8/16/1992; 8/19/1992; 8/22/1992; 8/23/1992;
8/27/1992; 8/29/1992; 9/3/1992; 9/5/1992; 9/14/1992; 11/19/1992; 3/25/1993; 5/1/1993;
6/10/1993; 6/15/1993; 7/19/1993; 7/20/1993; 8/5/1993; 7/12/1993; 8/27/1993;
8/28/1993; 8/29/1993; 9/2/1993; 9/3/1993; 9/13/1993; 9/21/1993; 9/25/1993; 11/22/1993;
11/23/1993; 5/7/1994; 5/8/1994; 5/10/1994; 5/27/1994; 6/13/1994; 6/14/1994; 6/22/1994;
7/5/1994; 7/11/1994; 7/14/1994; 7/15/1994; 7/15/1994; 7/18/1994; 7/19/1994; 7/21/1994;
7/22/1994; 7/28/1994; 7/29/1994; 8/5/1994; 8/17/1994; 8/25/1994; 8/25/1994; 8/31/1994;
9/15/1994; 3/25/1997; 8/18/1999; 8/21/1999; 5/20/2000; 6/9/2000; 6/10/2000; 6/17/2000;
6/18/2000; 6/19/2000; 4/9/2001; 5/22or23/2001; 6/7/2001; 6/20/2001; 7/16/2001; ;
7/18/2002; 6/14/2003; 7/24/2003; 9/7/2003; 9/15/2003; 6/14/05; 6/16/05, 6/17/05,
7/19/1993; 8/4/1993, 6/26/1993; 6/27/1993; 6/29/1993; 7/22/1993; 7/24/1993; 8/4/1993;
7/11/1993; 4/7/12/1993; 7/13/1993; 9/17/1993; 9/18/1993; 12/20/1993; 3/23/1994;
4/5/1994; 6/18/1994; 6/20/1994; 7/15/1994; 7/23/1994; 8/4/1994; 8/9/1994; 10/25/1994;
11/18/1994; 4/3/1997; 5/9/1997; 5/25/2001; 6/12/2001; 6/13/2001, 3/13/1997; 4/2/1997,
7/9/1993; 2/22/1994; 6/16/1997; 5/23/2001, 6/29/2000; 6/30/2000; 7/1/2000; 7/2/2000;
7/7/2000; 7/8/2000; 7/9/2000; 7/10/2000; 7/14/2000; 8/12/2000; 8/13/2000; 8/14/2000;
8/15/2000; 8/16/2000; 8/17/2000; 8/26/2000; 8/27/2000; 8/29/2000; 9/5/2000; 9/7/2000;
9/8/2000; 9/9/2000; 9/19/2000; 6/20/2001; 6/21/2001; 6/28/2001; 6/29/2001; 7/11/2001;
7/20/2001; 7/23/2001; 7/24/2001; 7/25/2001; 7/16/2001; 7/26/2001; 8/5/2001; 8/7/2001;
8/8/20018/9/2001; 8/9/2001; 8/13/2001; 8/14/2001; 8/16/2001; 8/23/2001; 8/24/2001;

8/25/2001; 8/30/2001; 9/1/2001; 9/7/2001; 6/21/2002; 6/23/2002; 6/25/2002; 7/22/2002;
7/23/2002; 7/25/2002; 6/15/2003; 8/12/2003; 8/14/2003; 8/29/2003; 9/1/2003; 9/5/2003;
9/12/2003; 9/13/2003; 9/16/2003; 9/18/2003; 5/27/2004; 5/29/2004; 6/2/2004; 6/16/2004;
6/17/2004; 7/8/2004; 7/20/2004; 7/22/2004; 7/16/05; 7/17/05; 7/27/05, 6/28/1992;
7/7/1992; 7/24/1992; 7/25/1992; 7/28/1992; 8/4/1992; 8/6/1992; 8/20/1992; 8/21/1992;
9/9/1992; 9/13/1992; 9/14/1992; 11/10/1992; 11/12/1992; 5/2/1993; 5/20/1993;
5/27/1993; 6/18/1993; 7/8/1993; 7/9/1993; 7/10/1993; 7/11/1993; 7/11/1993, 6/16/1993;
6/19/1993; 6/29/1993; 12/1/1994; 12/21/1994; 3/3/1997; 5/27/2000, 6/12/2000;
7/10/2003;., and for a substantial period of time after each date, Plaintiff's decedent was
exposed to and did take Daconil into his body through inhalation, ingestion and/or dermal
exposure to the product in the course of using and applying said product on golf courses
in accordance with manufacturer's instructions.

908. Plaintiff's Decedent's injuries and damages were caused by and were the
direct and proximate result of its breach of duty and negligence in any or all of the
following respects:

- a. In manufacturing and/or selling or distributing a product which was in a
defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the
defective condition of which the defendant was aware or in the exercise of
reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate,
sufficient and proper testing and inspection thereof;

- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;

- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 187
Strict Liability

Walsh v. Syngenta Crop Protection, Inc.
(Daconil)

909. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

910. When Syngenta sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

911. At all times relevant hereto, Syngenta knew that its product was defective and that users of its product would suffer serious health problems including AML.

912. At all relevant times, Syngenta's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

913. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

914. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

915. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

916. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its

pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

917. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

918. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

919. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 188
Breach of Warranty

Walsh v. Syngenta Crop Protection, Inc.
(Daconil)

920. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

921. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

922. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

923. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 189
Wrongful Death**

**Walsh v. Syngenta Crop Protection, Inc.
(Daconil)**

924. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

925. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 190
Survival Claim**

**Walsh v. Syngenta Crop Protection, Inc.
(Daconil)**

926. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

927. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 191
Negligence**

**Walsh v. Syngenta Crop Protection, Inc.
(Heritage)**

928. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

929. Syngenta Crop Protection, Inc., is a Corporation with offices located in Greensboro, North Carolina 27409, (hereinafter "Syngenta") and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted

the pesticide Heritage (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

930. At all times relevant hereto, Syngenta had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use.

931. On or about 6/11/1997; 6/12/1997; 9/8/2000; 9/9/2000; 5/22or23/01; 6/25/2001; 7/16/2001; 7/25/2001; 8/13/2001; 9/18/2001; 7/17/2002; 9/5/2003; 9/7/2003;, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Heritage into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

932. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;

- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;

- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 192
Strict Liability

Walsh v. Syngenta Crop Protection, Inc.
(Heritage)

933. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

934. When Syngenta sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

935. At all times relevant hereto, Syngenta knew that its product was defective and that users of its product would suffer serious health problems including AML.

936. At all relevant times, Syngenta's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

937. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

938. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

939. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

940. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its

pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

941. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

942. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

943. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 193
Breach of Warranty**

**Walsh v. Syngenta Crop Protection, Inc.
(Heritage)**

944. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

945. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

946. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

947. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 194
Wrongful Death

Walsh v. Syngenta Crop Protection, Inc.
(Heritage)

948. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

949. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 195
Survival Claim**

**Walsh v. Syngenta Crop Protection, Inc.
(Heritage)**

950. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

951. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 196
Negligence**

**Walsh v. Syngenta Crop Protection, Inc.
(Medallion)**

952. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

953. Syngenta Crop Protection, Inc. is a Corporation with offices located in Greensboro, North Carolina 27409, (hereinafter "Syngenta") and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Medallion (hereinafter "product" or "pesticide") in Allegheny County, Pennsylvania.

954. At all times relevant hereto, Syngenta had a duty to users of its pesticides and to Plaintiff's Decedent to manufacture, test, design and sell products that were safe for their intended use.

955. On or about 11/22/2002, and for a substantial period of time after that date, Plaintiff's decedent was exposed to and did take Medallion into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

956. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;

- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of

reasonable care should have known that it could not be discovered by
reasonable inspection;

- r. In negligently failing to disclose the defect in the said product to the
Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions
for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers,
markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount
in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 197
Strict Liability

Walsh v. Syngenta Crop Protection, Inc.
(Medallion)

957. Plaintiff hereby incorporates by reference the foregoing paragraphs as if
set forth at length.

958. When Syngenta sold or distributed its product it was expected to and did
reach the Plaintiff's Decedent's without substantial change in the condition in which it
was sold.

959. At all times relevant hereto, Syngenta knew that its product was defective
and that users of its product would suffer serious health problems including AML.

960. At all relevant times, Syngenta's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

961. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

962. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

963. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

964. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

965. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant

withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

966. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

967. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 198
Breach of Warranty

Walsh v. Syngenta Crop Protection, Inc.
(Medallion)

968. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

969. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

970. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

971. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 199
Wrongful Death**

**Walsh v. Syngenta Crop Protection, Inc.
(Medallion)**

972. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

973. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have

continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant

- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 200
Survival Claim**

**Walsh v. Syngenta Crop Protection, Inc.
(Medallion)**

974. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

975. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the

Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;

- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 201
Negligence**

**Walsh v. Syngenta Crop Protection, Inc.
(Sentinal)**

976. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

977. Syngenta Crop Protection, Inc., is a Corporation with offices located in Greensboro, North Carolina 27409, (hereinafter "Syngenta") and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Sentinel (hereinafter "product" or "pesticide") in Allegheny County, Pennsylvania.

978. At all times relevant hereto, Syngenta had a duty to users of its pesticides and to Plaintiff's Decedent to manufacture, test, design and sell products that were safe for their intended use.

979. On or about 6/4/1997; 6/5/1997; 6/6/1997; 7/2/2002; 7/3/2002; 7/4/2002, and for a substantial period of time after each date, and for a substantial period of time after each date, Plaintiff's decedent was exposed to and did take Sentinel into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer's instructions.

980. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;

- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;

- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 202
Strict Liability**

**Walsh v. Syngenta Crop Protection, Inc.
(Sentinal)**

981. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

982. When Syngenta sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

983. At all times relevant hereto, Syngenta knew that its product was defective and that users of its product would suffer serious health problems including AML.

984. At all relevant times, Syngenta's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

985. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

986. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

987. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

988. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

989. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

990. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence

of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

991. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 203
Breach of Warranty**

**Walsh v. Syngenta Crop Protection, Inc.
(Sentinal)**

992. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

993. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

994. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

995. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 204

Wrongful Death

Walsh v. Syngenta Crop Protection, Inc. (Sentinal)

996. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

997. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;

- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 205
Survival Claim**

**Walsh v. Syngenta Crop Protection, Inc.
(Sentinal)**

998. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

999. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 206
Negligence**

**Walsh v. Syngenta Crop Protection, Inc.
(Subdue Maxx)**

1000. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1001. Syngenta Crop Protection, Inc., is a Corporation with offices located in Greensboro, North Carolina 27409, (hereinafter “Syngenta”) and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Subdue Maxx (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

1002. At all times relevant hereto, Syngenta had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 6/27/2001;, and for a substantial period of time after that date, Plaintiff’s decedent was exposed to and did take Subdue Maxx into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

1003. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 207
Strict Liability

Walsh v. Syngenta Crop Protection, Inc.
(Subdue Maxx)

1004. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1005. When Syngenta sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

1006. At all times relevant hereto, Syngenta knew that its product was defective and that users of its product would suffer serious health problems including AML.

1007. At all relevant times, Syngenta's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

1008. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

1009. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

1010. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

1011. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

1012. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

1013. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

1014. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

**Count 208
Breach of Warranty**

**Walsh v. Syngenta Crop Protection, Inc.
(Subdue Maxx)**

1015. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1016. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

1017. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

1018. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 209
Wrongful Death

Walsh v. Syngenta Crop Protection, Inc.
(Subdue Maxx)

1019. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1020. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 210
Survival Claim**

**Walsh v. Syngenta Crop Protection, Inc.
(Subdue Maxx)**

1021. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1022. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 211
Negligence**

**Walsh v. Syngenta Crop Protection, Inc.
(Triumph 4E)**

1023. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1024. Syngenta Crop Protection, Inc., is a Corporation with offices located in Greensboro, North Carolina 27409, (hereinafter “Syngenta”) and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Triumph 4E (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

1025. At all times relevant hereto, Syngenta had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. On or about 5/5/1989; 5/26/1989; 6/14/1989; 7/24/1989; 7/26/1989; 10/3/1989; 10/10/1989; 10/19/1990; 9/18/1990; 9/20/1990; 7/13/1991, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take Triumph 4E into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

1026. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;

- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 212
Strict Liability

Walsh v. Walsh v. Syngenta Crop Protection, Inc.
(Triumph 4E)

1027. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1028. When Syngenta sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

1029. At all times relevant hereto, Syngenta knew that its product was defective and that users of its product would suffer serious health problems including AML.

1030. At all relevant times, Syngenta's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

1031. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

1032. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

1033. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

1034. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

1035. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

1036. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

1037. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 213
Breach of Warranty

Walsh v. Walsh v. Syngenta Crop Protection, Inc.
(Triumph 4E)

1038. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1039. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

1040. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

1041. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 214
Wrongful Death

Walsh v. Walsh v. Syngenta Crop Protection, Inc.
(Triumph 4E)

1042. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1043. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 215
Survival Claim**

**Walsh v. Walsh v. Syngenta Crop Protection, Inc.
(Triumph 4E)**

1044. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1045. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

**Count 216
Negligence**

**Walsh v. Monsanto Company
(Roundup)**

1046. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1047. Monsanto Company is a Corporation with offices located 800 N. Lindberg Blvd., St. Louis, MO 63167, (hereinafter “Monsanto”) and at all times relevant hereto manufactured, selected materials, compounded, inspected, tested, perfected, marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticide Roundup (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

1048. At all times relevant hereto, Monsanto had a duty to users of its pesticides and to Plaintiff’s Decedent to manufacture, test, design and sell products that were safe for their intended use. During all relevant times Plaintiff’s decedent was daily exposed to and did take Roundup into his body through inhalation, ingestion and/or dermal exposure to the product in the course of using and applying said product on golf courses in accordance with manufacturer’s instructions.

1049. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In manufacturing and/or selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition of which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products without reasonable, adequate, sufficient and proper testing and inspection thereof;
- e. In negligently testing, inspecting and examining the product when the Defendant knew that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently failing to manufacture and/or test, inspect and examine the product in conformity with the applicable standards of the industry;
- h. In so negligently and improperly manufacturing and/or testing and inspecting the product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In manufacturing and/or selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;

- l. In failing to correct the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly inspect the product before its sale or distribution to the Plaintiff's Decedent;
- o. In manufacturing and/or selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In manufacturing and/or selling or distributing a product of defective condition of which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to provide the product with everything necessary to make it safe;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In misbranding the product.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 217
Strict Liability

Walsh v. Monsanto Company
(Roundup)

1050. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1051. When Monsanto sold or distributed its product it was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

1052. At all times relevant hereto, Monsanto knew that its product was defective and that users of its product would suffer serious health problems including AML.

1053. At all relevant times, Monsanto's pesticide was in an unsafe and defective condition and when used in an intended manner the pesticide created a substantial danger of AML and other health problems to users of the product.

1054. At the time of the sale or distribution of the products by the Defendant, it was in a defective condition, which defect was the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

1055. Defendant's product is defective and unsafe for its intended use and when the product is used as intended and according to instructions, it is absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and

bystanders of the product and subjects them to substantial risk of serious health problems, including AML.

1056. Defendant's product is defective and unsafe for its intended use because it lacks adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

1057. At all relevant times Defendant's pesticide was misbranded because Defendant was aware of an increasing body of scientific evidence that indicated that its pesticide posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

1058. At all relevant times Defendant's pesticide was misbranded because in registering its product and in seeking and obtaining approval for its label, Defendant withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

1059. At all relevant times Defendant's pesticide was misbranded because Defendant failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

1060. At all relevant times Defendant's pesticide was misbranded because Defendant failed in its ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 218
Breach of Warranty

Walsh v. Monsanto Company
(Roundup)

1061. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1062. The Defendants warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

1063. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

1064. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 219
Wrongful Death

Walsh v. Monsanto Company
(Roundup)

1065. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1066. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 220
Survival Claim

Walsh v. Monsanto Company
(Roundup)

1067. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1068. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 221
Negligence
All Pesticides Named in the Complaint
Walsh v. E. H. Griffith, Inc.

1069. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1070. E.H. Griffith, Inc. (hereinafter “E.H.”) is a Pennsylvania Corporation with offices located at 2250 Palmer Street, Pittsburgh, PA 15218, and at all times relevant hereto marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticides identified in counts 1 through 215, inclusive, to Plaintiff’s decedent and/or to golf courses where Plaintiff’s decedent worked (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

1071. At all times relevant hereto, E.H. had a duty to users of its pesticides and to Plaintiff’s Decedent to market, distribute, recommend, provide instructions for use and sell products that were safe for their intended use.

1072. On or about each of the application dates set forth in counts 1 through 215, inclusive, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take the pesticides identified in counts 1 through 215, inclusive, into his body through inhalation, ingestion and/or dermal exposure to the products in the course of using, applying, and coming into contact with said products on golf courses.

1073. Plaintiff’s Decedent’s injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In selling or distributing a product which was in a defective condition;

- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products that it knew or should have known were not reasonably, adequately, sufficiently and properly tested and inspected;
- e. In selling or distributing products that were negligently tested, inspected and examined when the Defendant knew, or should have known, that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently selling or distributing a product that did not conform with the applicable standards of the industry;
- h. In so negligently selling or distributing an improperly manufactured and/or tested and inspected product that it was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;
- j. In selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;

- l. In failing to warn of the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly warn users of the product before its sale or distribution to the Plaintiff's Decedent;
- o. In selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In selling or distributing a product of defective condition which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to install and provide proper and adequate safety devices and/or safety instructions for the product;
- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;

- v. In selling or distributing a misbranded product which Defendant should have known was misbranded.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 222
Strict Liability
All Pesticides Named in the Complaint
Walsh v. E. H. Griffith, Inc.

1074. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1075. At all relevant times, the product was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

1076. At all relevant times, Defendant knew or should have known that the products were defective and that users of the products would suffer serious health problems including AML.

1077. At all relevant times, the products were in an unsafe and defective condition, and when used in an intended manner the products created a substantial danger of AML and other health problems to users of the product.

1078. At the time of the sale or distribution of the products by the Defendant, they were in a defective condition, which defects were the proximate and legal cause of the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

1079. Defendant's products are defective and unsafe for their intended use because when the products are used as intended and according to instructions, they are

absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product who are at substantial risk of serious health problems including AML.

1080. Defendant's products are defective and unsafe for their intended use because they lack adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

1081. At all relevant times Defendant's pesticides were misbranded because Defendant and/or others in the chain of distribution were aware of an increasing body of scientific evidence that indicated that its pesticides posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

1082. At all relevant times Defendant's pesticides were misbranded because in registering its products and in seeking and obtaining approval for its label, Defendant or others in the chain of distribution withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

1083. At all relevant times Defendant's pesticides were misbranded because Defendant or others in the chain of distribution failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of the product and such changes were necessary to protect the health and safety of users of the product.

1084. At all relevant times Defendant's pesticides were misbranded because Defendant or others in the chain of distribution failed in their ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 223
Breach of Warranty
All Pesticides Named in the Complaint
Walsh v. E. H. Griffith, Inc.

1085. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1086. The Defendant warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

1087. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

1088. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 224
Wrongful Death
All Pesticides Named in the Complaint
Walsh v. E. H. Griffith, Inc.

1089. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1090. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 225
Survival Claim
All Pesticides Named in the Complaint
Walsh v. E. H. Griffith, Inc

1091. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1092. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh, Deceased, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 226
Negligence
All Pesticides Named in the Complaint
Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.

1093. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1094. John Deere Landscaping, Inc., (hereinafter “Deere”) successor to Lesco, Inc. (hereinafter “Lesco”) is an Illinois Corporation with offices located at One John Deere Place, Moline, IL 61265, and at all times relevant hereto marketed, distributed, recommended, provided instructions for use, sold and promoted the pesticides identified in counts 1 through 215, inclusive, to Plaintiff’s decedent and/or to golf courses where Plaintiff’s decedent worked (hereinafter “product” or “pesticide”) in Allegheny County, Pennsylvania.

1095. At all times relevant hereto, Deere/Lesco had a duty to users of its pesticides and to Plaintiff’s Decedent to market, distribute, recommend, provide instructions for use and sell products that were safe for their intended use.

1096. On or about each of the application dates set forth in counts 1 through 215, inclusive, and for a substantial period of time after each date, Plaintiff’s decedent was exposed to and did take the pesticides identified in counts 1 through 215, inclusive, into his body through inhalation, ingestion and/or dermal exposure to the products in the course of using, applying, and coming into contact with said products on golf courses.

1097. Plaintiff's Decedent's injuries and damages were caused by and were the direct and proximate result of its breach of duty and negligence in any or all of the following respects:

- a. In selling or distributing a product which was in a defective condition;
- b. In failing to inspect the product to discover the defective condition;
- c. In negligently failing to warn or advise persons using the product of the defective condition which the defendant was aware or in the exercise of reasonable care should have been aware;
- d. In selling or distributing the products that it knew or should have known were not reasonably, adequately, sufficiently and properly tested and inspected;
- e. In selling or distributing products that were negligently tested, inspected and examined when the Defendant knew, or should have known, that danger to life and limb could result if the product was used for its intended purpose;
- f. In selling or distributing a product which failed to contain and apply good, safe, usual and/or reasonable engineering standards;
- g. In negligently selling or distributing a product that did not conform with the applicable standards of the industry;
- h. In so negligently selling or distributing an improperly manufactured and/or tested and inspected product that is was likely to cause injury and damage to a user thereof;
- i. In failing to provide the Plaintiff's Decedent with a safe product;

- j. In selling or distributing a product which was defective and unfit for its intended use and/or for any foreseeable use;
- k. In negligently, carelessly and recklessly selling or distributing a product which was in a defective condition;
- l. In failing to warn of the defective condition;
- m. In concealing the defective condition;
- n. In failing to employ or hire adequate personnel to properly warn users of the product before its sale or distribution to the Plaintiff's Decedent;
- o. In selling or distributing a product which was a defective product without giving reasonable warning of latent dangers in the use or reasonably foreseeable use thereof, which dangers the Defendant knew or in the exercise of reasonable care should have known;
- p. In selling or distributing a product of defective condition which was not obvious to Plaintiff's Decedent;
- q. In selling or distributing a defective product without giving notice or warning of the defect when the Defendant knew or in the exercise of reasonable care should have known that it could not be discovered by reasonable inspection;
- r. In negligently failing to disclose the defect in the said product to the Plaintiff's Decedent;
- s. In failing to install and provide proper and adequate safety devices and/or safety instructions for the product;

- t. In failing to provide adequate, suitable, sufficient, safe and proper directions for the use of said product;
- u. In failing to install, equip or provide the product with caution stickers, markers or labels warning of the hazards involved in the use of the product;
- v. In selling or distributing a misbranded product which Defendant should have known was misbranded.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 227
Strict Liability
All Pesticides Named in the Complaint
Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.

1098. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1099. At all relevant times, the product was expected to and did reach the Plaintiff's Decedent's without substantial change in the condition in which it was sold.

1100. At all times relevant hereto, Deere/Lesco knew that its product was defective and that users of its product would suffer serious health problems including AML.

1101. At all relevant times, the products were in an unsafe and defective condition, and when used in an intended manner the products created a substantial danger of AML and other health problems to users of the product.

1102. At the time of the sale or distribution of the products by the Defendant, they were in a defective condition, which defects were the proximate and legal cause of

the injuries and damages suffered by the Plaintiff's Decedent, and for which the Defendant is strictly liable.

1103. Defendant's products are defective and unsafe for their intended use because when the products are used as intended and according to instructions, they are absorbed into the bloodstream, central nervous system and the cells and organs of the body of users and bystanders of the product who are at substantial risk of serious health problems including AML.

1104. Defendant's products are defective and unsafe for their intended use because they lack adequate warning and instruction concerning the risk of AML to users and bystanders of its pesticides or any warning or instruction concerning ways for users or bystanders to mitigate or reduce the risk of AML.

1105. At all relevant times Defendant's pesticides were misbranded because Defendant and/or others in the chain of distribution were aware of an increasing body of scientific evidence that indicated that its pesticides posed risks to human health and environment, including the risk of AML and failed to include that evidence in its registration or on its label.

1106. At all relevant times Defendant's pesticides were misbranded because in registering its products and in seeking and obtaining approval for its label, Defendant or others in the chain of distribution withheld scientific data that its pesticide posed a risk of unreasonable adverse health effects to users of the product.

1107. At all relevant times Defendant's pesticides were misbranded because Defendant or others in the chain of distribution failed to make changes to its label when it became aware of scientific evidence of unreasonable health risks associated with use of

the product and such changes were necessary to protect the health and safety of users of the product.

1108. At all relevant times Defendant's pesticides were misbranded because Defendant or others in the chain of distribution failed in their ongoing obligation to draft pesticide labels that adequately protect health and the environment.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 228
Breach of Warranty
All Pesticides Named in the Complaint
Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.

1109. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1110. The Defendant warranted to the Plaintiff's Decedent that the products were merchantable and was fit for its intended use.

1111. The Plaintiff's Decedent relied on the warranties made by the Defendant, which warranties were breached by the Defendant by virtue of the injuries suffered by the Plaintiff's Decedent.

1112. By reason of the inadequacy of the warning and the misbranding of the product as alleged in the foregoing count, Defendant breached the warranty of merchantability and fitness for its intended use.

Wherefore, Plaintiff claims compensatory as well as punitive damages in an amount in excess of \$25,000.00, and in excess of the jurisdiction of the board of arbitrators.

Count 229
Wrongful Death
All Pesticides Named in the Complaint
Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.

1113. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1114. By reason of the acts, omissions and conduct of the Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the Wrongful Death beneficiaries as follows:

- a. For loss of earnings, services, support and contributions which Decedent had provided and made, and which Decedent would have provided and made during the remainder of Decedent's natural life, which earnings, services, support and contributions would have continued until the termination of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;
- b. For loss of earnings, services, support and contributions which Decedent would have provided and made during the remainder of decedent's natural life, which earnings, services, support and contributions would have continued until the termination of decedent's natural life but for the aforesaid acts, omission and conduct of Defendant
- c. For loss of Decedent's society, companionship, comfort and guidance, which the decedent had provided and which Decedent would have continued to provide during the remainder of Decedent's natural life but for the aforesaid acts, omission and conduct of Defendant;

- d. For funeral and burial expenses;
- e. For expenses incident to the last illness and death of Plaintiff's Decedent.

WHEREFORE, Plaintiff, on behalf of the wrongful death beneficiaries, requests compensatory damages as well as punitive damages in excess of Twenty Five Thousand (\$25,000.00) Dollars.

Count 230
Survival Claim
All Pesticides Named in the Complaint
Walsh v. John Deere Landscaping, Inc., successor to Lesco, Inc.

1115. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth at length.

1116. By reason of the aforesaid acts, omission and conduct of Defendant resulting in fatal injuries to and the death of the Decedent, Plaintiff claims damages of the Defendant for and on behalf of the estate of the Decedent as follows:

- a. For pain and suffering endured by the Decedent during said Decedent's lifetime;
- b. For loss of wages, earnings and earning power of the Decedent for a period of time beginning on the date and continuing throughout the remainder of the Decedent's life expectancy, which earnings and earning power would have continued for the said period of time but for the aforesaid acts, omission and conduct of Defendant;
- c. For expenses incident to the administration of the estate of the Decedent;
- d. For expenses incident to the last illness and death of the Decedent.

WHEREFORE, Plaintiff for and on behalf of the Estate of Thomas J. Walsh,
Deceased, requests compensatory damages as well as punitive damages in excess of Twenty
Five Thousand (\$25,000.00) Dollars.

JURY TRIAL DEMANDED AS TO ALL COUNTS

Respectfully Submitted,
SAVINIS, D'AMICO AND KANE L.L.C.

BY: 

Anthony J. D'Amico, Esquire
PA ID #36501
Attorney for Plaintiff
Suite 3626, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 227-6556

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
)
)
COUNTY OF ALLEGHENY)

I, Richard Thomas Walsh, being a party to the instant action, state that the foregoing averments are true and correct based upon my personal knowledge or information and belief and that the facts contained therein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsifications to authorities.

X
Richard Thomas Walsh

EXHIBIT 5

Hall Complaint



CORPORATION SERVICE COMPANY®

Notice of Service of Process

KZS / ALL
Transmittal Number: 10562549
Date Processed: 11/21/2012

Primary Contact: Anne W Troupis
Monsanto Company
800 N. Lindbergh Blvd
St. Louis, MO 63167

Entity:	Monsanto Company Entity ID Number 2282193
Entity Served:	Monsanto Company
Title of Action:	Tammy Hall vs. Dow Agrosiences, LLC
Document(s) Type:	Summons/Complaint
Nature of Action:	Personal Injury
Court/Agency:	Los Angeles County Superior Court, California
Case/Reference No:	NC053187
Jurisdiction Served:	California
Date Served on CSC:	11/20/2012
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Vincent Vallin Bennett 213-739-7000

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To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: DOW AGROSCIENCES, LLC: SYNGENTA
(AVISO AL DEMANDADO): CROP PROTECTION, LLC: MONSANTO
COMPANY: DOES 1 TO 100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
OCT 04 2012

John A. Clarke, Executive Officer/Clerk
By: my Deputy

YOU ARE BEING SUED BY PLAINTIFF: TAMMY HALL: CHRISTOPHER
(LO ESTÁ DEMANDANDO EL DEMANDANTE): HALL: JESSICA HALL;
SAMANTHA HALL: AMANDA HALL. individually and as heirs
to JERRY HALL. deceased

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court, County of Los Angeles
415 West Ocean Boulevard

CASE NUMBER
(Número del Caso):

10053187

Long Beach, CA 90802

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ROGER L. GORDON#053826; VINCENT VALLIN BENNETT #153861

213-739-7000

GORDON, EDELSTEIN, KREPACK, et. al

3580 WILSHIRE BLVD SUITE 1800

LOS ANGELES, CALIFORNIA 90010

DATE:

(Fecha) OCT 04 2012 John A. Clarke

Clerk by my
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): MONSANTO COMPANY

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
- ☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

PLD-PI-001

FOR COURT USE ONLY

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
OCT 04 2012

John A. Clarke, Executive Officer/Clerk

By: mf, Deputy

CASE NUMBER:

10052187

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

ROGER L. GORDON #053626
VINCENT VALLIN BENNETT #153861
GORDON, EDELSTEIN, KREPACK, et al.
3580 WILSHIRE BOULEVARD, SUITE 1800
LOS ANGELES, CALIFORNIA 90010
TELEPHONE NO: 213-739-7000 FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): PLAINTIFFS TAMMY HALL et al
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

STREET ADDRESS: 415 West Ocean Boulevard

MAILING ADDRESS:

CITY AND ZIP CODE: Long Beach, CA 90802

BRANCH NAME: Long Beach (South)

PLAINTIFF: TAMMY HALL; CHRISTOPHER HALL; JESSICA HALL;
SAMANTHA HALL; AMANDA HALL, individually and as heirs to
JERRY HALL, deceased

DEFENDANT: DOW AGROSCIENCES, LLC; SYNGENTA CROP
PROTECTION, LLC; MONSANTO COMPANY

☒ DOES 1 TO 100

COMPLAINT—Personal Injury, Property Damage, Wrongful Death

☐ AMENDED (Number):

Type (check all that apply):

☐ MOTOR VEHICLE☒ OTHER (specify): prod liability/gen neglig.☐ Property Damage☒ Wrongful Death☒ Personal Injury☐ Other Damages (specify):

Jurisdiction (check all that apply):

☐ ACTION IS A LIMITED CIVIL CASE

Amount demanded

☐ does not exceed \$10,000☐ exceeds \$10,000, but does not exceed \$25,000☒ ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)☐ ACTION IS RECLASSIFIED by this amended complaint☐ from limited to unlimited☐ from unlimited to limited

1. Plaintiff (name or names): TAMMY HALL; CHRISTOPHER HALL; JESSICA HALL; SAMANTHA HALL;
AMANDA HALL individually and as heirs to JERRY HALL, deceased
alleges causes of action against defendant (name or names): DOW AGROSCIENCES, LLC; SYNGENTA CROP
PROTECTION, LLC; MONSANTO COMPANY; DOES 1-100

2. This pleading, including attachments and exhibits, consists of the following number of pages: 6

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):

b. ☐ except plaintiff (name):

(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):

3 of 16

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

Page 1 of 3

PLO-PI-001

SHORT TITLE: HALL vs. DOW AGROSCIENCES et al

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): DOW
AGROSCIENCES, LLC(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):c. ☒ except defendant (name): MONSANTO COMPANY(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☒ except defendant (name): SYNGENTA CROP
PROTECTION, LLC(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):d. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1-100 were the agents or employees of other
named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 1-100 are persons whose capacities are unknown to
plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

4 of 16

PLD-PI-001

SHORT TITLE: HALL vs. DOW AGROSCIENCES et al

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):
- a. ☐ Motor Vehicle
 - b. ☒ General Negligence
 - c. ☐ Intentional Tort
 - d. ☒ Products Liability
 - e. ☐ Premises Liability
 - f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (specify):

Loss of consortium as to Plaintiff Tammy Hall, as a result of the injuries/death of her husband, Decedent Jerry Hall

12. ☒ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

a. ☐ listed in Attachment 12.

b. ☒ as follows:

TAMMY HALL (spouse) CHRISTOPHER HALL; JESSICA HALL; SAMANTHA HALL; AMANDA HALL; (natural children)

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: OCTOBER 3, 2012

VINCENT VALLIN BENNETT
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

PLD-PI-001(5)

SHORT TITLE: HALL vs. DOW AGROSCIENCES et al

CASE NUMBER:

FIRST

(number)

CAUSE OF ACTION—Products Liability

Page 4

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint
 (Use a separate cause of action form for each cause of action.)

Plaintiff (name): TAMMY HALL; CHRISTOPHER HALL; JESSICA HALL; SAMANTHA HALL; AMANDA HALL, individually and as heirs to JERRY HALL, deceased

Prod. L-1. On or about (date): October 5, 2010 (date/death plaintiff was injured by the following product:
SEE ATTACHMENT PROD L-1

Prod. L-2. Each of the defendants knew the product would be purchased and used without inspection for defects. The product was defective when it left the control of each defendant. The product at the time of injury was being

- ☒ used in the manner intended by the defendants.
☒ used in a manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3. Plaintiff was a

- ☐ purchaser of the product. ☐ user of the product.
☒ bystander to the use of the product. ☐ other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4. ☒ Count One—Strict liability of the following defendants who

- a. ☒ manufactured or assembled the product (names): DOW AGROSCIENCES, LLC (Manuf. and/or distributor of Durban, Durban Pro, TurnFlow Ester, Fore 80 WP and 2, 4-D); SYNGENTA CROP PROTECTION, LLC (Manuf. and/or distributor of Primo Maxx and Banner Maxx and 2, 4-D); MONSANTO COMPANY (Manuf. and/or distributor of Round-Up and 2, 4-D)
☒ Does 1 to 100
 b. ☒ designed and manufactured component parts supplied to the manufacturer (names): DOW AGROSCIENCES, LLC (Durban, Durban Pro, TurnFlow Ester, Fore 80 WP and 2, 4-D); SYNGENTA CROP PROTECTION, LLC (Primo Maxx and Banner Maxx and 2, 4-D); MONSANTO CO (Round-Up and 2, 4-D)
☒ Does 1 to 100
 c. ☒ sold the product to the public (names): DOW AGROSCIENCES, LLC (Durban, Durban Pro, TurnFlow Ester, Fore 80 WP and 2, 4-D); SYNGENTA CROP PROTECTION, LLC (Primo Maxx and Banner Maxx and 2, 4-D); MONSANTO CO (Round-Up and 2, 4-D)

☒ Does 1 to 100

Prod. L-5. ☒ Count Two—Negligence of the following defendants who owed a duty to plaintiff (names):

DOW AGROSCIENCES, LLC (Durban, Durban Pro, TurnFlow Ester, Fore 80 WP and 2, 4-D); SYNGENTA CROP PROTECTION, LLC (Primo Maxx and Banner Maxx and 2, 4-D); MONSANTO CO (Round-Up and 2, 4-D)

☒ Does 1 to 100

Prod. L-6. ☒ Count Three—Breach of warranty by the following defendants (names): DOW AGROSCIENCES, LLC (Durban, Durban Pro, TurnFlow Ester, Fore 80 WP and 2, 4-D); SYNGENTA CROP PROTECTION, LLC (Primo Maxx and Banner Maxx and 2, 4-D);

☒ Does 1 to 100

- a. ☒ who breached an implied warranty
 b. ☐ who breached an express warranty which was
☐ written ☐ oral

Prod. L-7. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are
☐ listed in Attachment-Prod. L-7 ☐ as follows:

6 of 16

Page 9 of 1

SHORT TITLE: HALL vs. DOW AGROSCIENCE	CASE NUMBER:
---------------------------------------	--------------

1 ATTACHMENT: P-L 1

2

3 Plaintiffs, Tammy Hall, Christopher Hall, Jessica Hall, Samantha Hall and Amanda
 4 Hall, and as heirs to Decedent, Jerry Hall were injured as a result of their
 5 decedent's use, application and exposure to various toxic products, including, but
 6 not limited to the following products (as well as the subject products constituent
 7 chemicals, compounds and/or ingredients) manufactured and/or distributed by
 8 defendants and each of them as herbicides, pesticides and/or fungicides, while
 9 plaintiffs decedent worked as a golf course superintendent: DOW AGROSCIENCES, LLC
 10 (Manufacturer and/or distributor of Dursban, Dursban Pro, TurnFlow Ester, Fore 80
 11 WP, and 2, 4-D); SYNGENTA CROP PROTECTION, LLC (Manufacturer and/or distributor of
 12 Primo Maxx and Banner Maxx, and 2, 4-D); MONSANTO COMPANY (Manufacturer and/or
 13 distributor of Round-Up, and 2, 4-D). Plaintiffs decedent, Jerry Hall was exposed
 14 to the foregoing products, chemicals, compounds, herbicides, pesticides and/or
 15 fungicides through dermal contact, ingestion and/or respiration through the air,
 16 water and/or ground resulting in bodily, organ, cellular invasion, destruction,
 17 damage, mutation and/or change culminating in decedent developing leukemia and his
 18 subsequent death on October 5, 2010.

19

20 Plaintiffs contend that through the actions, omissions, negligence and/or reckless
 21 disregard for human health safety and welfare, defendants and each of them did
 22 manufacture and or distribute dangerous and defective products as set forth above,
 23 that resulted in the death of plaintiffs decedent, and the loss and damage to
 24 plaintiffs herein as a consequence thereof.

25

26 (Required for verified pleading) The items on this page stated on information and belief (specify item numbers, not line
 numbers):

27

This page may be used with any Judicial Council form or any other paper filed with this court. Page 5

PLD-PI-001(2)

SHORT TITLE:

CASE NUMBER:

SECOND

(number)

CAUSE OF ACTION—General Negligence

Page 6

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): TAMMY HALL; CHRISTOPHER HALL; JESSICA HALL; SAMANTHA HALL; AMANDA HALL, INDIVIDUALLY AND AS HEIRS TO JERRY HALL, DECEASED alleges that defendant (name): DOW AGROSCIENCES, LLC (Manufacturer and/or distributor of Dursban Dursban Pro, TurnFlow Ester, Fore 80 WP, and 2, 4-D); SYNGENTA CROP PROTECTION, LLC (Manufacturer and/or distributor of Primo Maxx and Banner Maxx, and 2, 4-D); MONSANTO COMPANY (Manufacturer and/or distributor of Round-Up, and 2, 4-D).

☒ Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): October 5, 2010 (date of death) and prior

at (place): El Dorado Park Golf Course; 2400 N. Studebaker Road; Long Beach, CA 90815 and other similar golf courses.

(description of reasons for liability):

Plaintiffs, Tammy Hall, Christopher Hall, Jessica Hall, Samantha Hall and Amanda Hall, and as heirs to Decedent, Jerry Hall were injured as a result of their decedent's use, application and exposure to various toxic products, including, but not limited to the following products (as well as the subject products constituent chemicals, compounds and/or ingredients) manufactured and/or distributed by defendants and each of them as herbicides, pesticides and/or fungicides, while plaintiffs decedent worked as a golf course superintendent: DOW AGROSCIENCES, LLC (Manufacturer and/or distributor of Dursban Dursban Pro, TurnFlow Ester, Fore 80 WP and 2, 4-D); SYNGENTA CROP PROTECTION, LLC (Manufacturer and/or distributor of Primo Maxx and Banner Maxx and 2, 4-D); MONSANTO COMPANY (Manufacturer and/or distributor of Round-Up and 2, 4-D). Plaintiffs decedent, Jerry Hall was exposed to the foregoing products, chemicals, compounds, herbicides, pesticides and/or fungicides through dermal contact, ingestion and/or respiration through the air, water and/or ground resulting in bodily, organ, cellular invasion, destruction, damage, mutation and/or change culminating in decedent developing leukemia and his subsequent death on October 5, 2010.

Plaintiffs contend that through the actions, omissions, negligence and/or reckless disregard for human health safety and welfare, defendants and each of them did manufacture and or distribute dangerous and defective products as set forth above, that resulted in the death of plaintiffs decedent, and the loss and damage to plaintiffs herein as a consequence thereof.

8 of 16

Page 1 of 1

EXHIBIT 6

McCallister Complaint



CORPORATION SERVICE COMPANY®

Notice of Service of Process

NTP / ALL
Transmittal Number: 10325441
Date Processed: 09/14/2012

Primary Contact: Anne W Troupis
Monsanto Company
800 N. Lindbergh Blvd
St. Louis, MO 63167

Entity:	Monsanto Company Entity ID Number 2282193
Entity Served:	Monsanto Company
Title of Action:	Douglas McCallister vs. Aervoe Industries Incorporated, formerly known as Aervoe Pacific Company, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Product Liability
Court/Agency:	Los Angeles County Superior Court, California
Case/Reference No:	BC490551
Jurisdiction Served:	California
Date Served on CSC:	09/13/2012
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Kimberly Miller 562-437-4499

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: AERVOE INDUSTRIES INCORPORATED,
(AVISO AL DEMANDADO):** formerly known as Aervoe Pacific
Company, Inc., a Nevada Corporation (Additional
Parties Attachment Form is attached)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

AUG 22 2012

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY Deputy

**YOU ARE BEING SUED BY PLAINTIFF: DOUGLAS McCALLISTER
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER:
(Número del Caso):

BC 490551

Superior Court of California
County of Los Angeles - Central District
111 N. Hill Street
Los Angeles, California 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kimberly A. Miller, Esq. (SBN: 97738 (562) 437-4499 (562) 436-1561
Metzger Law Group

401 E. Ocean Blvd., Suite 800
Long Beach, California 90802-4966

JOHN A. CLARKE

Shaunya Wesley

DATE:

AUG 22 2012

Clerk, by

Deputy

(Fecha)

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☒ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

SHORT TITLE: DOUGLAS McCALLISTER v. AERVOE INDUSTRIES
INCORPORATED, ET AL.

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
➤ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

ALBAUGH, INC., doing business in California as Agristar by Albaugh, Inc., an Iowa Corporation; THE ANDERSON, INC., successor by acquisition to Scotts Co The ProTurf Div., an Ohio Corporation; AVANTOR PERFORMANCE MATERIALS, INC., formerly known as Mallinckrodt Baker, Inc., formerly known as J.T. Baker Inc., formerly known as J.T. Baker Chemical Company, a New Jersey Corporation; BARNES GROUP INC., successor by acquisition to Kar Products, a Delaware Corporation; BASF CORPORATION, a Delaware Corporation; BAYER CROPSCIENCE, INC., CANADA, which does business as Bayer CropScience Canada, which also does business as Bayer CropScience, Inc., a Canada Corporation; BAYER CROPSCIENCE LP, doing business as Bayer CropScience, and which also does business through its business group Bayer Environmental Science, which was also formerly known as Aventis CropScience USA LP, a Delaware limited partnership; CHEMICAL PACKAGING CORPORATION doing business through its division, Terand Industries, a California Corporation; CHEVRON CORPORATION, which formerly did business through its subsidiary Chevron Environmental Health Center, Inc., a Delaware Corporation; CITGO PETROLEUM CORPORATION, a Delaware Corporation; CRAFTCO, INC., an Arizona Corporation; CREATIVE MARKETING AND RESEARCH, INC., a California Corporation; CREATIVE SALES, INC., a Nebraska Corporation; CROP PRODUCTION SERVICES, INC., individually and formerly known as Verdicon, Inc., a Delaware Corporation; DOWAGROSCIENCES LLC, individually and formerly known as DowElanco LLC, which did business as DowElanco, a Delaware limited liability company; THE DOW CHEMICAL COMPANY which does business through its subsidiary Dow AgroSciences Canada, Inc., a Delaware Corporation; E.I. DU PONT DE NEMOURS AND COMPANY doing business as Du Pont, a Delaware Corporation; EWING IRRIGATION PRODUCTS, INC., a Nevada Corporation; GARDNER-GIBSON, INC., which may have also done business as Gardner-Gibson Corporation, a Florida Corporation; HORIZON DISTRIBUTORS, INC., a Delaware Corporation; ILLINOIS TOOL WORKS INC., doing business as ITW Dymon, a Delaware Corporation; IPS CORPORATION, a Delaware Corporation; J.P. SIMPLOT COMPANY, a Nevada Corporation; JOHN DEERE LANDSCAPES, INC., a Delaware Corporation; LAWN AND GARDEN PRODUCTS, INC., a California Corporation; LBS ENTERPRISES, L.L.C.M which also does business as All Stats Coasting Company, a Texas limited liability company; LEBANON SEABOARD CORPORATION, individually and formerly known as Lebanon Chemical Corporation, a Pennsylvania Corporation; LESCO, INC., which does business in California as Lesco Products, Inc., an Ohio Corporation; LOVELAND PRODUCTS, INC., a Colorado Corporation; MONSANTO COMPANY, a Delaware Corporation; MOTSENBOCKER ADVANCED DEVELOPMENT, INC., doing business as Motsenbocker's Lift Off, a California Corporation; PBI-GORDON CORPORATION which also does business as PBI/Gordon Corporation, a Missouri Corporation; PREMIER FARNELL CORPORATION, successor by merger to Premier Industrial Corporation, a Delaware Corporation; THE QUIKRETE COMPANIES, INC., which may also do business as The Quikrete Companies, a Delaware Corporation; RADIATOR SPECIALTY COMPANY a North Carolina Corporation; THE SCOTTS COMPANY LLC, successor by acquisition to The Solaris Group of Monsanto Company, an Ohio limited liability company; SHEILA SHINE INC., a Florida Corporation; SIERRA PACIFIC TURF SUPPLY, INC., a California Corporation; SYNGENTA CROP PROTECTION, LLC, individually, and formerly known as Syngenta Crop Products, Inc., which was successor by merger to Zeneca AG Products, Inc., which did business as Zeneca Agricultural Products, which was also formerly known as Novartis Crop Protections, Inc., formerly known as Sandoz Agro, Inc., a Delaware limited liability company; SYNGENTA CROP PROTECTIONS CANADA, INC., a Canada Corporation; T. CHRISTY ENTERPRISES, which also does business as T. Christy Enterprises, Inc., a California Corporation; TITAN LABORATORIES, INC., a California Corporation; UNITED PHOSPHORUS INC., a Pennsylvania Corporation; VALENT U.S.A. CORPORATION, a California Corporation; WATERSAVERS IRRIGATION, INC., a California Corporation; WD-40 MANUFACTURING COMPANY, a California Corporation; WESTERN COLLOID, N.C., INC., formerly doing business as Western Colloid Products, a California Corporation; WESTERN EXTERMINATOR COMPANY, formerly known as Target Specialty Products, Inc., a California Corporation; WILCO DISTRIBUTORS INC., a California Corporation; ZENBECA NC., formerly known as ICI Americas, Inc., a Delaware Corporation; and DOES 1 through 100, INCLUSIVE,

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OF ORIGINAL FILED**
Los Angeles Superior Court

AUG 22 2012

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY Deputy

Attorneys for Plaintiff,
Douglas McCallister

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

DOUGLAS McCALLISTER,
Plaintiff,
vs.

CASE NO.

BC 490551

**COMPLAINT FOR TOXIC INJURIES
ASSERTING CAUSES OF ACTION
FOR:**

AERVOE INDUSTRIES INCORPORATED,
formerly known as Aervoe
Pacific Company, Inc., a
Nevada Corporation; ALBAUGH,
INC., doing business in
California as Agristar by
Albaugh, Inc., an Iowa
Corporation; THE ANDERSON,
INC., successor by acquisition
to Scotts Co The ProTurf Div.,
an Ohio Corporation; AVANTOR
PERFORMANCE MATERIALS, INC.,
formerly known as Mallinckrodt
Baker, Inc., formerly known as
J.T. Baker Inc., formerly
known as J.T. Baker Chemical
Company, a New Jersey
Corporation; BARNES GROUP
INC., successor by acquisition
to Kar Products, a Delaware
Corporation; BASF CORPORATION,
a Delaware Corporation; BAYER
CROPSCIENCE, INC., CANADA,
which does business as Bayter
CropScience Canada, which also
does business as Bayer
CropScience, Inc., a Canada
Corporation; BAYER CROPSCIENCE
LP., doing business as Bayer
CropScience, and which also

- (1) NEGLIGENCE;
- (2) NEGLIGENCE PER SE
- (3) NEGLIGENCE PER SE FOR
MISBRANDING
- (4) STRICT LIABILITY -
FAILURE TO WARN;
- (5) STRICT LIABILITY - DESIGN
DEFECT;
- (6) FRAUDULENT CONCEALMENT;
- (7) BREACH OF IMPLIED
WARRANTIES

**DEMAND FOR JURY TRIAL [MADE
PURSUANT TO CALIFORNIA CODE O
CIVIL PROCEDURE §§ 600 ET SEQ.
AND PURSUANT TO RULE 38 OF THE
FEDERAL RULES OF CIVIL
PROCEDURE SHOULD THIS CASE
EVER BE REMOVED TO FEDERAL
COURT]**

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1	business through its business)
2	group Bayer Environmental)
3	Science, which was also)
4	formerly known as Aventis)
5	CropScience USA LP, a Delaware)
6	limited partnership; CHEMICAL)
7	PACKAGING CORPORATION doing)
8	business through its division,)
9	Terand Industries, a)
10	California Corporation;)
11	CHEVRON CORPORATION, which)
12	formerly did business through)
13	its subsidiary Chevron)
14	Environmental Health Center,)
15	Inc., a Delaware Corporation;)
16	CITGO PETROLEUM CORPORATION, a)
17	Delaware Corporation; CRAFTCO,)
18	INC., an Arizona Corporation;)
19	CREATIVE MARKETING AND)
20	RESEARCH, INC., a California)
21	Corporation; CREATIVE SALES,)
22	INC., a Nebraska Corporation;)
23	CROP PRODUCTION SERVICES,)
24	INC., individually and)
25	formerly known as Verdicon,)
26	Inc., a Delaware Corporation;)
27	DOWAGROSCIENCES LLC,)
28	individually and formerly)
	known as DowElanco LLC, which)
	did business as DowElanco, a)
	Delaware limited liability)
	company; THE DOW CHEMICAL)
	COMPANY which does business)
	through its subsidiary Dow)
	AgroSciencces Canada, Inc., a)
	Delaware Corporation; E.I. DU)
	PONT DE NEMOURS AND COMPANY)
	doing business as Du Pont, a)
	Delaware Corporation; EWING)
	IRRIGATION PRODUCTS, INC., a)
	Nevada Corporation; GARDNER-)
	GIBSON, INC., which may have)
	also done business as Gardner-)
	Gibson Corporation, a Florida)
	Corporation; HORIZON)
	DISTRIBUTORS, INC., a Delaware)
	Corporation; ILLINOIS TOOL)
	WORKS INC., doing business as)
	ITW Dymon, a Delaware)
	Corporation; IPS CORPORATION,)
	a Delaware Corporation; J.P.)
	SIMPLLOT COMPANY, a Nevada)
	Corporation; JOHN DEERE)
	LANDSCAPES, INC., a Delaware)
	Corporation; LAWN AND GARDEN)
	PRODUCTS, INC., a California)

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1	Corporation; LBS ENTERPRISES,)
2	L.L.C.M which also does)
3	business as All Stats Coasting)
4	Company, a Texas limited)
5	liability company; LEBANON)
6	SEABOARD CORPORATION,)
7	individually and formerly)
8	known as Lebanon Chemical)
9	Corporation, a Pennsylvania)
10	Corporation; LESCO, INC.,)
11	which does business in)
12	California as Lesco Products,)
13	Inc., an Ohio Corporation;)
14	LOVELAND PRODUCTS, INC., a)
15	Colorado Corporation; MONSANTO)
16	COMPANY, a Delaware)
17	Corporation; MOTSENBOCKER)
18	ADVANCED DEVELOPMENT, INC.,)
19	doing business as)
20	Motsenbocker's Lift Off, a)
21	California Corporation; PBI-)
22	GORDON CORPORATION which also)
23	does business as PBI/Gordon)
24	Corporation, a Missouri)
25	Corporation; PREMIER FARNELL)
26	CORPORATION, successor by)
27	merger to Premier Industrial)
28	Corporation, a Delaware)
	Corporation; THE QUIKRETE)
	COMPANIES, INC., which may)
	also do business as The)
	Quikrete Companies, a Delaware)
	Corporation; RADIATOR)
	SPECIALTY COMPANY a North)
	Carolina Corporation; THE)
	SCOTTS COMPANY LLC, successor)
	by acquisition to The Solaris)
	Group of Monsanto Company, an)
	Ohio limited liability)
	company; SHEILA SHINE INC., a)
	Florida Corporation; SIERRA)
	PACIFIC TURF SUPPLY, INC., a)
	California Corporation;)
	SYNGENTA CROP PROTECTION, LLC,)
	individually, and formerly)
	known as Syngenta Crop)
	Products, Inc., which was)
	successor by merger to Zeneca)
	AG Products, Inc., which did)
	business as Zeneca)
	Agricultural Products, which)
	was also formerly known as)
	Novertis Crop Protections,)
	Inc., formerly known as Sandoz)
	Agro, Inc., a Delaware limited)
	liability company; SYNGENTA)

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1 CROP PROTECTIONS CANADA, INC.,)
a Canada Corporation; T.)
2 CHRISTY ENTERPRISES, which)
also does business as T.)
3 Christy Enterprises, Inc., a)
California Corporation; TITAN)
4 LABORATORIES, INC., a)
California Corporation; UNITED)
5 PHOSPHORUS INC., a)
Pennsylvania Corporation;)
6 VALENT U.S.A. CORPORATION, a)
California Corporation;)
7 WATERSAVERS IRRIGATION, INC.,)
a California Corporation; WD-)
8 40 MANUFACTURING COMPANY, a)
California Corporation;)
9 WESTERN COLLOID, N.C., INC.,)
formerly doing business as)
10 Western Colloid Products, a)
California Corporation;)
11 WESTERN EXTERMINATOR COMPANY,)
formerly known as Target)
12 Specialty Products, Inc., a)
California Corporation; WILCO)
13 DISTRIBUTORS INC., a)
California Corporation; ZENECA)
14 NC., formerly known as ICI)
Americas, Inc., a Delaware)
15 Corporation; and DOES 1)
through 100, INCLUSIVE,)
16 Defendants.)
17

18
19 Plaintiff Douglas McCallister hereby alleges:
20

21 **THE PARTIES**

22
23 1. At all material times hereto, Plaintiff Douglas
24 McCallister has resided in the State of California.

25 2. Plaintiff is informed and believes and thereon alleges
26 that Defendant, Aervoe Industries Incorporated, formerly known as
27 Aervoe Pacific Company, Inc., is a Nevada corporation, which at all
28 material times hereto, was doing business in the County of Los

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DISEASE, CANCER, AND TOXIC INJURIES

1 Angeles, State of California.

2 3. Plaintiff is informed and believes and thereon alleges
3 that Defendant, Albaugh, Inc., which does business in California as
4 Agristar by Albaugh, Inc., is an Iowa corporation, which at all
5 material times hereto, was doing business in the County of Los
6 Angeles, State of California.

7 4. Plaintiff is informed and believes and thereon alleges
8 that Defendant, The Andersons, Inc., successor by acquisition to
9 Scotts Co The ProTurf Div., is an Ohio corporation, which at all
10 material times hereto, was doing business in the County of Los
11 Angeles, State of California.

12 5. Plaintiff is informed and believes and thereon alleges
13 that Defendant, Avantor Performance Materials, Inc., formerly known
14 as Mallinckrodt Baker, Inc., formerly known as J.T. Baker Inc.,
15 formerly known as J.T. Baker Chemical Company, is a New Jersey
16 corporation, which at all material times hereto, was doing business
17 in the County of Los Angeles, State of California.

18 6. Plaintiff is informed and believes and thereon alleges
19 that Defendant, Barnes Group Inc., successor by acquisition to Kar
20 Products, is a Delaware corporation, which at all material times
21 hereto, was doing business in the County of Los Angeles, State of
22 California.

23 7. Plaintiff is informed and believes and thereon alleges
24 that Defendant, BASF Corporation, is a Delaware corporation, which
25 at all material times hereto, was doing business in the County of Los
26 Angeles, State of California.

27 8. Plaintiff is informed and believes and thereon alleges
28 that Defendant, Bayer CropScience, Inc., Canada, which does business

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1 as Bayer CropScience Canada, which also does business as Bayer
2 CropScience, Inc., is a Canada corporation, which at all material
3 times hereto, was doing business in the County of Los Angeles, State
4 of California.

5 9. Plaintiff is informed and believes and thereon alleges
6 that Defendant, Bayer CropScience LP, doing business as Bayer
7 CropScience, and which also does business through its business group
8 Bayer Environmental Science, and which was also formerly known as
9 Aventis CropScience USA LP, which did business as Aventis, is a
10 Delaware limited partnership, which at all material times hereto, was
11 doing business in the County of Los Angeles, State of California.

12 10. Plaintiff is informed and believes and thereon alleges
13 that Defendant, Chemical Packaging Corporation, doing business
14 through its division, Terand Industries, is a California corporation,
15 which at all material times hereto, was doing business in the County
16 of Los Angeles, State of California.

17 11. Plaintiff is informed and believes and thereon alleges
18 that Defendant, Chevron Corporation, which formerly did business
19 through its subsidiary Chevron Environmental Health Center, Inc., is
20 a Delaware corporation, which at all material times hereto, was doing
21 business in the County of Los Angeles, State of California.

22 12. Plaintiff is informed and believes and thereon alleges
23 that Defendant, Citgo Petroleum Corporation, is a Delaware
24 corporation, which at all material times hereto, was doing business
25 in the County of Los Angeles, State of California.

26 13. Plaintiff is informed and believes and thereon alleges
27 that Defendant, Crafcro, Inc., is an Arizona corporation, which at all
28 material times hereto, was doing business in the County of Los

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DISEASE, CANCER, AND TOXIC INJURIES

1 Angeles, State of California.

2 14. Plaintiff is informed and believes and thereon alleges
3 that Defendant, Creative Marketing and Research, Inc., is a
4 California corporation, which at all material times hereto, was doing
5 business in the County of Los Angeles, State of California.

6 15. Plaintiff is informed and believes and thereon alleges
7 that Defendant, Creative Sales, Inc., is a Nebraska corporation,
8 which at all material times hereto, was doing business in the County
9 of Los Angeles, State of California.

10 16. Plaintiff is informed and believes and thereon alleges
11 that Defendant, Crop Production Services, Inc., individually, and
12 formerly known as Verdicon, Inc., is a Delaware corporation, which
13 at all material times hereto, was doing business in the County of Los
14 Angeles, State of California.

15 17. Plaintiff is informed and believes and thereon alleges
16 that Defendant, Dow AgroSciences LLC, individually, and formerly
17 known as DowElanco LLC, which did business as DowElanco, is a
18 Delaware limited liability company, which at all material times
19 hereto, was doing business in the County of Los Angeles, State of
20 California.

21 18. Plaintiff is informed and believes and thereon alleges
22 that Defendant, The Dow Chemical Company, which does business through
23 its subsidiary Dow AgroSciences Canada, Inc., is a Delaware
24 corporation, which at all material times hereto, was doing business
25 in the County of Los Angeles, State of California.

26 19. Plaintiff is informed and believes and thereon alleges
27 that Defendant, E.I. Du Pont De Nemours and Company, doing business
28 as Du Pont, is a Delaware corporation, which at all material times

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hereto, was doing business in the County of Los Angeles, State of California.

20. Plaintiff is informed and believes and thereon alleges that Defendant, Ewing Irrigation Products, Inc., is a Nevada corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

21. Plaintiff is informed and believes and thereon alleges that Defendant, Gardner-Gibson, Inc., which may have also done business as Gardner-Gibson Corporation, is a Florida corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

22. Plaintiff is informed and believes and thereon alleges that Defendant, Horizon Distributors, Inc., is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

23. Plaintiff is informed and believes and thereon alleges that Defendant, Illinois Tool Works Inc., doing business as ITW Dymon, is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

24. Plaintiff is informed and believes and thereon alleges that Defendant, IPS Corporation, is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

25. Plaintiff is informed and believes and thereon alleges that Defendant, J. R. Simplot Company, is a Nevada corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

26. Plaintiff is informed and believes and thereon alleges

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1 that Defendant, John Deere Landscapes, Inc., is a Delaware
2 corporation, which at all material times hereto, was doing business
3 in the County of Los Angeles, State of California.

4 27. Plaintiff is informed and believes and thereon alleges
5 that Defendant, Lawn and Garden Products, Inc., is a California
6 corporation, which at all material times hereto, was doing business
7 in the County of Los Angeles, State of California.

8 28. Plaintiff is informed and believes and thereon alleges
9 that Defendant, Lbs Enterprises, L.L.C., which also does business as
10 All States Coatings Company, is a Texas limited liability company,
11 which at all material times hereto, was doing business in the County
12 of Los Angeles, State of California.

13 29. Plaintiff is informed and believes and thereon alleges
14 that Defendant, Lebanon Seaboard Corporation, individually, and
15 formerly known as Lebanon Chemical Corporation, is a Pennsylvania
16 corporation, which at all material times hereto, was doing business
17 in the County of Los Angeles, State of California.

18 30. Plaintiff is informed and believes and thereon alleges
19 that Defendant, Lesco, Inc., which does business in California as
20 Lesco Products, Inc., is an Ohio corporation, which at all material
21 times hereto, was doing business in the County of Los Angeles, State
22 of California.

23 31. Plaintiff is informed and believes and thereon alleges
24 that Defendant, Loveland Products, Inc., is a Colorado corporation,
25 which at all material times hereto, was doing business in the County
26 of Los Angeles, State of California.

27 32. Plaintiff is informed and believes and thereon alleges
28 that Defendant, Monsanto Company, is a Delaware corporation, which

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at all material times hereto, was doing business in the County of Los Angeles, State of California.

33. Plaintiff is informed and believes and thereon alleges that Defendant, Motsenbocker Advanced Developments, Inc., doing business as Motsenbocker's Lift Off, is a California corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

34. Plaintiff is informed and believes and thereon alleges that Defendant, PBI-Gordon Corporation, which also does business as PBI/Gordon Corporation, is a Missouri corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

35. Plaintiff is informed and believes and thereon alleges that Defendant, Premier Farnell Corporation, successor by merger to Premier Industrial Corporation, is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

36. Plaintiff is informed and believes and thereon alleges that Defendant, The Quikrete Companies, Inc., which may also do business as The Quikrete Companies, is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

37. Plaintiff is informed and believes and thereon alleges that Defendant, Radiator Specialty Company, is a North Carolina corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

38. Plaintiff is informed and believes and thereon alleges that Defendant, The Scotts Company LLC, successor by acquisition to

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1 The SOLARIS Group of Monsanto Company, is an Ohio limited liability
2 company, which at all material times hereto, was doing business in
3 the County of Los Angeles, State of California.

4 39. Plaintiff is informed and believes and thereon alleges
5 that Defendant, Sheila Shine Inc, is a Florida corporation, which at
6 all material times hereto, was doing business in the County of Los
7 Angeles, State of California.

8 40. Plaintiff is informed and believes and thereon alleges
9 that Defendant, Sierra Pacific Turf Supply, Inc., is a California
10 corporation, which at all material times hereto, was doing business
11 in the County of Los Angeles, State of California.

12 41. Plaintiff is informed and believes and thereon alleges
13 that Defendant, Syngenta Crop Protection, LLC, individually, and
14 formerly known as Syngenta Crop Protection, Inc., which was successor
15 by merger to Zeneca AG Products, Inc., which did business as Zeneca
16 Agricultural Products, and which was also formerly known as Novartis
17 Crop Protection, Inc., formerly known as Sandoz Agro, Inc., is a
18 Delaware limited liability company, which at all material times
19 hereto, was doing business in the County of Los Angeles, State of
20 California.

21 42. Plaintiff is informed and believes and thereon alleges
22 that Defendant, Syngenta Crop Protection Canada, Inc., is a Canada
23 corporation, which at all material times hereto, was doing business
24 in the County of Los Angeles, State of California.

25 43. Plaintiff is informed and believes and thereon alleges
26 that Defendant, T. Christy Enterprises, which also does business as
27 T. Christy Enterprises, Inc., is a California corporation, which at
28 all material times hereto, was doing business in the County of Los

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1 Angeles, State of California.

2 44. Plaintiff is informed and believes and thereon alleges
3 that Defendant, Titan Laboratories, Inc., is a California
4 corporation, which at all material times hereto, was doing business
5 in the County of Los Angeles, State of California.

6 45. Plaintiff is informed and believes and thereon alleges
7 that Defendant, United Phosphorus Inc., is a Pennsylvania
8 corporation, which at all material times hereto, was doing business
9 in the County of Los Angeles, State of California.

10 46. Plaintiff is informed and believes and thereon alleges
11 that Defendant, Valent U.S.A. Corporation, is a California
12 corporation, which at all material times hereto, was doing business
13 in the County of Los Angeles, State of California.

14 47. Plaintiff is informed and believes and thereon alleges
15 that Defendant, Watersavers Irrigation, Inc., is a California
16 corporation, which at all material times hereto, was doing business
17 in the County of Los Angeles, State of California.

18 48. Plaintiff is informed and believes and thereon alleges
19 that Defendant, WD-40 Manufacturing Company, is a California
20 corporation, which at all material times hereto, was doing business
21 in the County of Los Angeles, State of California.

22 49. Plaintiff is informed and believes and thereon alleges
23 that Defendant, Western Colloid, N.C., Inc., formerly doing business
24 as Western Colloid Products, is a California corporation, which at
25 all material times hereto, was doing business in the County of Los
26 Angeles, State of California.

27 50. Plaintiff is informed and believes and thereon alleges
28 that Defendant, Western Exterminator Company, formerly known as

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1 Target Specialty Products, Inc., is a California corporation, which
2 at all material times hereto, was doing business in the County of Los
3 Angeles, State of California.

4 51. Plaintiff is informed and believes and thereon alleges
5 that Defendant, Wilco Distributors Inc., is a California corporation,
6 which at all material times hereto, was doing business in the County
7 of Los Angeles, State of California.

8 52. Plaintiff is informed and believes and thereon alleges
9 that Defendant, Zeneca Inc., formerly known as ICI Americas, Inc.,
10 is a Delaware corporation, which at all material times hereto, was
11 doing business in the County of Los Angeles, State of California.

12 53. The true names and capacities of Defendants Does 1
13 through 200 are unknown to Plaintiff, who therefore sues said
14 defendants by such fictitious names. Plaintiffs will amend this
15 complaint to state the true names and capacities of said fictitious
16 defendants when they have been ascertained. Plaintiff is informed
17 and believe and thereon alleges that Defendants Does 1 through 100
18 are in some manner responsible for the occurrences herein alleged,
19 and that Plaintiff's damages as herein alleged were proximately
20 caused by their conduct.

21 54. Plaintiff is informed and believe and based thereon
22 allege that, at all times material hereto, each of the Defendants,
23 including the fictitiously named Defendants, was acting in an
24 individual, corporate, partnership, associate, parent-subsidiary,
25 successor-predecessor, conspiratorial or other capacity or as the
26 agent, employee, co-conspirator, and/or alter ego of its co-
27 defendants, and in doing the acts herein alleged, was acting within
28 the course and scope of its authority as such parent, successor,

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partner, associate, agent, employee, co-conspirator, or alter ego, and with the permission, consent, knowledge, authorization, ratification and direction of its co-defendants, including all fictitiously named defendants.

PRODUCT IDENTIFICATION

55. Following is a list of those chemical products thus far identified to which Plaintiff, Douglas McCallister, was exposed during the course of Plaintiff's employment with various employers throughout California and which caused Plaintiff's toxic injuries and occupational diseases:

Aervoe Industries Incorporated, formerly known as Aervoe Pacific Company, Inc.,

Manufacturer and/or supplier of the following product(s):

(16A) Aerosol Spray Primers

(20A) Marking Chalk- All Colors

And other products to be determined during discovery.

Albaugh, Inc., which does business in California as Agristar by Albaugh, Inc.,

Manufacturer and/or supplier of the following product(s):

Albaugh Weed-hoe 108

Triclopyr 4E

And other products to be determined during discovery.

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///

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The Andersons, Inc., successor by acquisition to Scotts Co. The ProTurf Div.,

Manufacturer and/or supplier of the following product(s):

Scotts Turf Fertilizer Plus Merit Insecticide

And other products to be determined during discovery.

Avantor Performance Materials, Inc., formerly known as Mallinckrodt Baker, Inc., formerly known as J.T. Baker Inc., formerly known as J.T. Baker Chemical Company.

Manufacturer and/or supplier of the following product(s):

Acetone

And other products to be determined during discovery.

Barnes Group Inc., successor by acquisition to Kar Products,

Manufacturer and/or supplier of the following product(s):

Cleaners/Automotive Prod #77161

And other products to be determined during discovery.

BASF Corporation,

Manufacturer and/or supplier of the following product(s):

Drive 75 DF herbicide

Pendulum Aquacap Herbicide

Pendulum 2G Herbicide

Pendulum 3.3 EC

And other products to be determined during discovery.

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Bayer CropScience Inc., Canada, which does business as Bayer CropScience Canada, which also does business as Bayer CropScience, Inc.,

Manufacturer and/or supplier of the following product(s):

Merit 0.5G insecticide

And other products to be determined during discovery.

Bayer CropScience LP, also known as Bayer CropScience, which does business through its business group Bayer Environmental Science,

Manufacturer and/or supplier of the following product(s):

Merit 0.5G insecticide

Merit 2.5 G Ornamental Insecticide

Revolver Herbicide

Ronstar 50 Wsp herbicide

Ronstar G Herbicide

Suspend SC insecticide

Tempo Ultra Wsp Insecticide water soluble packets

And other products to be determined during discovery.

Bayer CropScience LP, formerly known as Aventis CropScience USA LP, which also did business as Aventis,

Manufacturer and/or supplier of the following product(s):

Ronstar G herbicide

And other products to be determined during discovery.

Bayer CropScience LP, which does business as Bayer CropScience,

Manufacturer and/or supplier of the following product(s):

Bayleton 50 Turf and Ornamental Fungicide in Water Soluble

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Packets

And other products to be determined during discovery.

Chemical Packaging Corporation, doing business through its division,
Terand Industries, Inc.,

Manufacturer and/or supplier of the following product(s):

Mark Off Vandalism Remover- Super Strength Solvent Jel

And other products to be determined during discovery.

Chevron Corporation, which formerly did business through its
subsidiary Chevron Environmental Health Center, Inc.,

Manufacturer and/or supplier of the following product(s):

5291 Orthene tree & Ornamental Spray

And other products to be determined during discovery.

Citgo Petroleum Corporation,

Manufacturer and/or supplier of the following product(s):

Echo Power Blend Two-Cycle Engine Oil

Mineral Spirits 75

Motsenbocker's Lift Off #1

And other products to be determined during discovery.

Crafco, Inc.,

Manufacturer and/or supplier of the following product(s):

Roadsaver ad Polyflex Sealants

And other products to be determined during discovery.

Creative Marketing & Research, Inc.,

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1 Manufacturer and/or supplier of the following product(s):

2 CMR Herbicide Activator

3 And other products to be determined during discovery.

4
5 Creative Sales, Inc.,

6 Manufacturer and/or supplier of the following product(s):

7 Acecap 97 Systemic Insecticide Implants

8 And other products to be determined during discovery.

9
10 Crop Production Services, Inc.,

11 Manufacturer and/or supplier of the following product(s):

12 Acecap 97 Systemic Insecticide Implants

13 Acme/Gordon's Dormant Oil Spray

14 Barricade 65 WG Herbicide

15 Bayleton 50 Turf and Ornamental Fungicide in Water Soluble
16 Packets

17 Best Dimension 270-G

18 Daconil 2787 Flowable Fungicide

19 Diazinon AG 600 WBC

20 Dimension 2EW Herbicide

21 Dimension Turf Herbicide

22 Drive 75 DF Herbicide

23 Dursban Pro Insecticide

24 Embark 2S Plant Growth Regulator

25 Florel Brand Growth Regulator

26 Fusilade II Turf and Ornamental

27 Gallery 75 Dry Flowable Herbicide

28 Gordon's Super TRIMEC Broadleaf Herbicide

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- 1 KERB 50W Herbicide
- 2 Malathion ULV concentrate
- 3 Merit 0.5G Insecticide
- 4 Merit 2.5G Ornamental Insecticide
- 5 NO FOAM A
- 6 NO FOAM B
- 7 Oust Herbicide
- 8 Pendulum 2G Herbicide
- 9 Pendulum 3.3 EC
- 10 Pendulum Aquacap Herbicide
- 11 Revolver Herbicide
- 12 Reward Landscape and Aquatic Herbicide
- 13 Ronstar 50 WSP Herbicide
- 14 Ronstar G Herbicide
- 15 Roundup PRO Herbicide
- 16 Speedzone Southern Broadleaf Herbicide for Turf
- 17 Sucker-Stopper RTU
- 18 Surflan A.S. Herbicide-ornamentals
- 19 Suspend SC insecticide
- 20 Tempo Ultra WSP Insecticide
- 21 Turflon Ester Herbicide
- 22 Wilco Gopher Getter Type 1 Bait
- 23 Wilco Ground Squirrel Bait
- 24 *And other products to be determined during discovery.*
- 25
- 26 **Dow AgroSciences LLC,**
- 27 *Manufacturer and/or supplier of the following product(s):*
- 28 Dimension 2EW herbicide

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Dursban Pro Insecticide
Gallery 75 Dry Flowable Herbicide
KERB 50W Herbicide
Surflan A.S. Herbicide- ornamentals
Turflon Ester Herbicide
Treflan HFP Herbicide

And other products to be determined during discovery.

Dow AgroSciences LLC, formerly known as DowElanco LLC, which did
business as DowElanco,

Manufacturer and/or supplier of the following product(s):

Turflon Ester Herbicide

And other products to be determined during discovery.

The Dow Chemical Company, which does business through its subsidiary
Dow AgroSciences Canada, Inc.,

Manufacturer and/or supplier of the following product(s):

Dimension Turf Herbicide

And other products to be determined during discovery.

E.I. Du Pont De Nemours and Company, doing business as Du Pont,

Manufacturer and/or supplier of the following product(s):

Oust Herbicide

And other products to be determined during discovery.

Ewing Irrigation Products, Inc.,

Manufacturer and/or supplier of the following product(s):

Barricade 65 WG Herbicide

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BEST Dimension 270-G Specialty Herbicide

Manage Turf Herbicide

NO FOAM A

NO FOAM B

Pendulum 2G Herbicide

Pendulum 3.3 EC Herbicide

Reward Aquatic Herbicide

Ronstar G Herbicide

Roundup PRO Herbicide

Surflan A.S. Herbicide-ornamentals

Turflon Ester Herbicide

And other products to be determined during discovery.

Gardner-Gibson, Inc., which may have also done business as

Gardner-Gibson Corporation,

Manufacturer and/or supplier of the following product(s):

Black Jack

And other products to be determined during discovery.

Horizon Distributors, Inc.,

Manufacturer and/or supplier of the following product(s):

Acme/Gordon's Dormant Oil Spray

Bayleton 50 Turf and Ornamental Fungicide in Water Soluble

Packets

Embark 2S Plant Growth Regulator

Gordon's Super TRIMEC Broadleaf Herbicide

QuikPRO Herbicide

Ranger PRO Herbicide

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1 Roundup PRO Herbicide
2 Speedzone Southern Broadleaf Herbicide for Turf
3 Surflan A.S. Herbicide-ornamentals
4 Tempo Ultra WSP Insecticide water soluble packets
5 Wilco Ground Squirrel Bate
6 Wilco Gopher Getter Type 1 Bait

7 *And other products to be determined during discovery.*

9 Illinois Tool Works Inc., doing business as ITW Dymon,

10 *Manufacturer and/or supplier of the following product(s):*

11 Graffiti and Spray Paint Remover

12 *And other products to be determined during discovery.*

14 IPS Corporation,

15 *Manufacturer and/or supplier of the following product(s):*

16 Weld-On 711 Low VOC PVC Plastic pipe cements

17 Weld-On 721 Low VOC cement for PVC Plastic pipe

18 Weld-On P-70 Low VOC Primer for PVC and CPVC Plastic Pipe

19 *And other products to be determined during discovery.*

21 J.R. Simplot Company,

22 *Manufacturer and/or supplier of the following product(s):*

23 BEST Dimension 270-G

24 *And other products to be determined during discovery.*

26 John Deere Landscapes, Inc.,

27 *Manufacturer and/or supplier of the following product(s):*

28 Barricade 65 WG Herbicide

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1	Bayleton 50 Turf and Ornamental Fungicide in Water Soluble
2	Packets
3	Best Dimension 270-G Specialty Herbicide
4	Dimension 2EW Herbicide
5	Drive 75 DF Herbicide
6	Dursban Pro Insecticide
7	Embark 2S Plant Growth Regulator
8	Florel Brand Growth Regulator
9	Fusilade II Turf & Ornamental
10	Gallery 75 Dry Flowable Herbicide
11	Merit 0.5G Insecticide
12	Merit 2.5G Ornamental Insecticide
13	NO FOAM A
14	NO FOAM B
15	Oust Herbicide
16	Pendulum 2G Herbicide
17	Pendulum 3.3 EC
18	Pendulum Aquacap Herbicide
19	Revolver Herbicide
20	Reward Landscape and Aquatic
21	Ronstar 50 WSP Herbicide
22	Ronstar G Herbicide
23	Roundup PRO Herbicide
24	Speedzone Southern Broadleaf Herbicide for Turf
25	Sucker-Stopper RTU
26	Surflan A.S. Herbicide-ornamentals
27	Suspend SC Insecticide
28	Tempo Ultra WSP Insecticide water soluble packets

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Turflon Ester Herbicide

Wilco Gopher Getter Type 1 Bait

Wilco Ground Squirrel Bait

And other products to be determined during discovery.

Lawn & Garden Products, Inc.,

Manufacturer and/or supplier of the following product(s):

Florel Brand Fruit Eliminator

Florel Brand Growth Regulator

NO FOAM A

NO FOAM B

Sucker-Stopper RTU

Turflon Ester

And other products to be determined during discovery.

Lbs Enterprises, L.L.C., which also does business as All States
Coatings Company,

Manufacturer and/or supplier for the following product(s):

Asphalt Leveling Compound, formerly, Gator Aid

And other products to be determined during discovery.

Lebanon Seaboard Corporation,

Manufacturer and/or supplier of the following product(s):

Proscape 20-4-10, also known as Merit Granular Insecticide
(0.15%-0.35%)

And other products to be determined during discovery.

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Lebanon Seaboard Corporation, formerly known as Lebanon Chemical Corporation,

Manufacturer and/or supplier of the following product(s):

Proscape 5-5-20 Ronstar, also known as Country Club 5-5-20 with Ronstar

And other products to be determined during discovery.

Lesco, Inc., which does business in California as Lesco Products, Inc.,

Manufacturer and/or supplier of the following product(s):

Lesco Fertilizer with Systemic Turf Fungicide

Lesco Granular Fertilizer- All analyses

Lesco Mach 2 0.86% Plus Fertilizer

Lesco Professional control product Mach 2 0.86% plus fertilizer

Lesco Pre-M 3.3 EC Turf Herbicide

Lesco Pre-M 3.3 EC Herbicide

Lesco Three-Way Selective Herbicide

And other products to be determined during discovery.

Loveland Products, Inc.,

Manufacturer and/or supplier of the following product(s):

Diazinon AG600 WBC

Malathion ULV Concentrate Insecticide

And other products to be determined during discovery.

Monsanto Company,

Manufacturer and/or supplier of the following product(s):

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1 Expedite Grass and Weed Herbicide

2 Manage Turf Herbicide

3 QuikPRO Herbicide

4 Ranger PRO herbicide

5 Roundup ProDry herbicide

6 Roundup PRO Herbicide

7 *And other products to be determined during discovery.*

8
9 Motsenbocker Advanced Developments, Inc., doing business as
10 Motsenbocker's Lift Off,

11 *Manufacturer and/or supplier of the following product(s):*

12 Motsenbocker's Lift Off #1

13 Motsenbocker's Lift Off #2

14 Motsenbocker's Lift Off #3

15 *And other products to be determined during discovery.*

16
17 PBI-Gordon Corporation, which also does business as PBI/Gordon
18 Corporation,

19 *Manufacturer and/or supplier of the following product(s):*

20 Acme/Gordon's Dormant oil Spray

21 Embark 2S Plant Growth Regulator

22 Gordon's Super TRIMEC Broadleaf Herbicide

23 Speedzone Southern Broadleaf Herbicide for Turf

24 *And other products to be determined during discovery.*

25
26 Premier Farnell Corporation, successor by merger to Premier
27 Industrial Corporation,

28 *Manufacturer and/or supplier of the following product(s):*

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Aero-Tech Industrial Green

And other products to be determined during discovery.

The Quikrete Companies, Inc., which may also do business as The Quikrete Companies,

Manufacturer and/or supplier of the following product(s):

Blacktop Patch/Commercial grade blacktop patch

And other products to be determined during discovery.

Radiator Specialty Company,

Manufacturer and/or supplier of the following product(s):

Foaming Engine Degreaser (aerosol)

Liquid Wrench

And other products to be determined during discovery.

The Scotts Company LLC, successor by acquisition to The SOLARIS Group of Monsanto Company,

Manufacturer and/or supplier of the following product(s):

RosePride Funginex Rose & Shrub Disease Control

And other products to be determined during discovery.

Sheila Shine, Inc.,

Manufacturer and/or supplier of the following product(s):

Sheila Shine Aerosol

And other products to be determined during discovery.

Sierra Pacific Turf Supply, Inc.,

Manufacturer and/or supplier of the following product(s):

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- 1 Bayleton 50 Turf and Ornamental Fungicide in Water Soluble
- 2 Packets
- 3 Barricade 65 WG Herbicide
- 4 BEST Dimension 270-G Specialty Herbicide
- 5 Dimension 2EW Herbicide
- 6 Dursban Pro Insecticide
- 7 Embark 2S Plant Growth Regulator
- 8 Florel Brand Growth Regulator
- 9 Fusilade II Turf & Ornamental
- 10 Gallery 75 Dry Flowable Herbicide
- 11 Merit 0.5G Insecticide
- 12 Merit 2.5 G Ornamental Insecticide
- 13 Pendulum 2G Herbicide
- 14 Pendulum Aquacap Herbicide
- 15 QuikPRO Herbicide
- 16 Ranger PRO Herbicide
- 17 Revolver Herbicide
- 18 Reward Landscape and Aquatic Herbicide
- 19 Ronstar 50 WSP Herbicide
- 20 Ronstar G Herbicide
- 21 Speedzone Southern Broadleaf Herbicide for Turf
- 22 Sucker-Stopper RTU
- 23 Surflan A.S. Herbicide-ornamentals
- 24 Suspend SC Insecticide
- 25 Tempo Ultra WSP Insecticide water soluble packets
- 26 Turflon Ester Herbicide
- 27 Wilco Gopher Getter Type 1 Bait
- 28 Wilco Ground Squirrel Bait

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And other products to be determined during discovery.

Syngenta Crop Protection, LLC,

Manufacturer and/or supplier of the following product(s):

Reward Landscape and aquatic herbicide

And other products to be determined during discovery.

Syngenta Crop Protection, LLC, formerly known as Syngenta Crop Protection, Inc.,

Manufacturer and/or supplier of the following product(s):

Barricade 65 WG herbicide

Fusilade II Turf & Ornamental

And other products to be determined during discovery.

Syngenta Crop Protection, LLC, formerly known as Syngenta Crop Protection, Inc., successor by merger to Zeneca AG Products, Inc., which did business as Zeneca Agricultural Products,

Manufacturer and/or supplier of the following product(s):

Fusilade II Turf & ornamental

And other products to be determined during discovery.

Syngenta Crop Protection, LLC, formerly known as Syngenta Crop Protection, Inc., formerly known as Novartis Crop Protection, Inc., formerly known as Sandoz Agro, Inc.,

Manufacturer and/or supplier of the following product(s):

Barricade 65WG Herbicide

And other products to be determined during discovery.

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Syngenta Crop Protection Canada, Inc.,

Manufacturer and/or supplier of the following product(s):

Daconil 2787 Flowable Fungicide

And other products to be determined during discovery.

T. Christy Enterprises, which also does business as T. Christy Enterprises, Inc.,

Manufacturer and/or supplier of the following product(s):

Christy's Red hot Blue Glue

And other products to be determined during discovery.

Titan Laboratories, Inc.,

Manufacturer and/or supplier of the following product(s):

Oil-Flo Safety Solvent Cleaner

And other products to be determined during discovery.

United Phosphorus Inc.,

Manufacturer and/or supplier of the following product(s):

Surflan AS Specialty

And other products to be determined during discovery.

Valent U.S.A. Corporation,

Manufacturer and/or supplier of the following product(s):

Orthene 75 S Soluble Powder (insecticide)

Ortho Orthenex Garden Insect & Disease Control Concentrate

And other products to be determined during discovery.

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Watersavers Irrigation, Inc.,

Manufacturer and/or supplier of the following product(s):

Best Dimension 270-G Specialty Herbicide
Drive 75 DF herbicide
Embark 2S Plant Growth Regulator
Florel Brand Growth Regulator
Fusilade II Turf & Ornamental
Gallery 75 Dry Flowable Herbicide
Gordon's Super TRIMEC Broadleaf Herbicide
Merit 0.5G Insecticide
NO FOAM A
Pendulum 2G Herbicide
Pendulum Aquacap Herbicide
Reward Landscape and Aquatic
Ronstar 50 WSP herbicide
Ronstar G Herbicide
Roundup PRO Herbicide
Speedzone Southern Broadleaf Herbicide for Turf
Surflan A.S. Herbicide-ornamentals
Tempo Ultra WSP Insecticide water soluble packets
Turflon Ester Herbicide
Wilco Gopher Getter Type 1 Bait
Wilco Ground Squirrel Bait

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WD-40 Manufacturing Company,

Manufacturer and/or supplier of the following product(s):

WD-40 Bulk Liquid

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1 And other products to be determined during discovery.

2
3 Western Colloid, N.C., Inc., formerly doing business as Western
4 Colloid Products,

5 Manufacturer and/or supplier of the following product(s):

6 Asphalt Leveling Compound, formerly, Gator Aid

7 And other products to be determined during discovery.

8
9 Western Exterminator Company, formerly known as Target Specialty
10 Products, Inc.,

11 Manufacturer and/or supplier of the following product(s):

12 Target Pro-Spreader Activator

13 And other products to be determined during discovery.

14
15 Wilco Distributors Inc.,

16 Manufacturer and/or supplier of the following product(s):

17 Wilco Ground Squirrel Bait

18 Wilco Gopher Getter Type 1 Bait

19 And other products to be determined during discovery.

20
21 Zeneca Inc., formerly known as ICI Americas Inc.,

22 Manufacturer and/or supplier of the following product(s):

23 Fusilade 2000 1E

24 And other products to be determined during discovery.

25 ///

26 ///

27 ///

28 ///

GENERAL ALLEGATIONS

56. From about 1989 through 2011, Plaintiff, Douglas McCallister, worked as a laborer for various employers located throughout California, including Los Angeles. Plaintiff is informed and believes and thereon alleges that the injuries from which Plaintiff, Douglas McCallister suffers and which are the subject of this action, were sustained in the course of Plaintiff's work for various employers at their facilities located throughout California, including Los Angeles.

57. In the course of and throughout Plaintiff's employment with various employers, Plaintiff, Douglas McCallister, worked with and was exposed to those chemical products hereinafter identified. The chemical products which Plaintiff worked with and was exposed to contained significant concentrations of aromatic solvents, aliphatic solvents, naphthenic solvents, other organic solvents, chlorinated solvents, benzene, as well as other toxic chemicals, and pesticides which contain toxins, dioxin and organic solvents, benzene, as well as other toxic chemicals. In the course of his work for various employers, Plaintiff, Douglas McCallister, was exposed to toxicologically significant levels of these chemicals. As a direct and proximate result of said exposure to said toxic chemical products, Plaintiff, Douglas McCallister, sustained serious injuries to his internal organs, including Myelodysplastic Syndrome. As medical treatment for Plaintiff's Myelodysplastic Syndrome, Plaintiff, Douglas McCallister, has been hospitalized and undergone surgery and other treatments and will require organ transplantation as medically necessary and lifesaving treatment.

TOLLING OF STATUTE OF LIMITATIONS

Appreciable Injury and Diagnosis Postdating Exposure

58. Plaintiff, Douglas McCallister, was first diagnosed with Myelodysplastic Syndrome in or about February, 2011. Prior to said time Plaintiff did not discover, and could not reasonably have discovered, that Plaintiff, Douglas McCallister, had been injured and was suffering from Myelodysplastic Syndrome, the toxic nature of said injuries and disease, or their occupational cause. The pathological effect of said disease occurred without perceptible trauma and Plaintiff was blamelessly ignorant of its cause. It was not until about February, 2011, that Plaintiff was even aware that Douglas McCallister, had sustained any appreciable injury.

Ignorance of Cause of Disease

59. At the time Plaintiff, Douglas McCallister, was diagnosed with Myelodysplastic Syndrome in or about February, 2011, and continuing thereafter until the present date, no physician ever told Plaintiff, Douglas McCallister, what the cause of Plaintiff's Myelodysplastic Syndrome was or that Plaintiff's Myelodysplastic Syndrome even had a cause.

Incapacity

60. Upon being diagnosed with Myelodysplastic Syndrome in or about February, 2011, and continuing thereafter for a substantial period of time, Plaintiff, Douglas McCallister, was extremely ill and incapacitated and was hospitalized. During this time Plaintiff, Douglas McCallister, was physically unable to investigate and

determine the cause of Plaintiff's disease.

Suspicion of Cause of Disease

61. The first time Plaintiff suspected that Plaintiff, Douglas McCallister's Myelodysplastic Syndrome might be occupationally related was in or about February, 2011.

Ignorance of Identity of Injury-Causing Hazardous Substances

62. Notwithstanding his diligent efforts, at no time even until the present date did Plaintiff personally ascertain the identity of those chemical products which caused Douglas McCallister's Myelodysplastic Syndrome; nor did Plaintiff personally ascertain any ingredients or contaminants of the products to which Plaintiff, Douglas McCallister, was exposed at work that caused Plaintiff Douglas McCallister's Myelodysplastic Syndrome; and to this very date, Plaintiff personally remains ignorant of the identity of hazardous substances to which Plaintiff, Douglas McCallister was exposed at work that caused Plaintiff, Douglas McCallister's Myelodysplastic Syndrome. It was only after Plaintiff, Douglas McCallister, first met with his attorneys of record in or about September, 2011, that Plaintiff was able to vicariously identify the chemical products which caused Douglas McCallister's Myelodysplastic Syndrome and other medical conditions.

Fraudulent Concealment of Toxic Hazards by Defendants

63. At all material times hereto, Defendants fraudulently concealed from Plaintiff material facts concerning the nature of the chemicals to which Plaintiff, Douglas McCallister, was exposed.

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determine the cause of Plaintiff's disease.

Suspicion of Cause of Disease

61. The first time Plaintiff suspected that Plaintiff, Douglas McCallister's Myelodysplastic Syndrome might be occupationally related was in or about February, 2011.

Ignorance of Identity of Injury-Causing Hazardous Substances

62. Notwithstanding his diligent efforts, at no time even until the present date did Plaintiff personally ascertain the identity of those chemical products which caused Douglas McCallister's Myelodysplastic Syndrome; nor did Plaintiff personally ascertain any ingredients or contaminants of the products to which Plaintiff, Douglas McCallister, was exposed at work that caused Plaintiff Douglas McCallister's Myelodysplastic Syndrome; and to this very date, Plaintiff personally remains ignorant of the identity of hazardous substances to which Plaintiff, Douglas McCallister was exposed at work that caused Plaintiff, Douglas McCallister's Myelodysplastic Syndrome. It was only after Plaintiff, Douglas McCallister, first met with his attorneys of record in or about September, 2011, that Plaintiff was able to vicariously identify the chemical products which caused Douglas McCallister's Myelodysplastic Syndrome and other medical conditions.

Fraudulent Concealment of Toxic Hazards by Defendants

63. At all material times hereto, Defendants fraudulently concealed from Plaintiff material facts concerning the nature of the chemicals to which Plaintiff, Douglas McCallister, was exposed.

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64. At all material times hereto, Defendants fraudulently concealed the toxic hazards of their chemical products from Plaintiff Douglas McCallister, the hazards of the conditions under which Plaintiff, Douglas McCallister, was exposed to said chemical products, that Douglas McCallister was being exposed to and suffering toxic injuries from said chemical products, and the cause of Plaintiff, Douglas McCallister's injuries and occupational disease.

65. At all material times hereto, Defendants fraudulently concealed from Plaintiff that their products either were carcinogens, contained carcinogenic ingredients, or contained carcinogenic contaminants as a result of manufacturing processes.

66. At all material times hereto, Defendants failed to disclose to Plaintiff toxic hazards of their products, which Defendants were by law required to disclose to Plaintiff, Douglas McCallister, pursuant to the Hazard Communication Standard and pursuant to California common law.

67. Defendants' concealment was sufficiently complete that Plaintiff did not know, nor in the exercise of reasonable care could have known earlier than February of 2011 of Defendants' culpability, that Plaintiff, Douglas McCallister, had sustained toxic injuries, that chemicals to which Douglas McCallister, was occupationally exposed had caused Plaintiff, Douglas McCallister's Myelodysplastic Syndrome, and other injuries, or that Plaintiff had causes of action arising from Plaintiff, Douglas McCallister's injuries.

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FIRST CAUSE OF ACTIONFOR NEGLIGENCE

(By Plaintiff, Douglas McCallister,

Against All Named Defendants and Does 1-200)

68. Plaintiff refers to paragraphs 1 through 67 and, by this reference, incorporate said paragraphs hereat as though set forth in full.

69. As chemical manufacturers and distributors, Defendants owed Plaintiff a legal duty to exercise due care in importing, producing, and distributing the foregoing chemical products to various employers at their facilities located at various locations throughout California, including Los Angeles.

70. Defendants negligently and carelessly imported, produced, and distributed the foregoing chemical products to various employers at their facilities located at various locations throughout California, including Los Angeles, where Plaintiff, Douglas McCallister, was exposed to said toxic chemical products.

71. Defendants also failed to adequately warn Plaintiff, Douglas McCallister, and Plaintiff's employers, of the hazards of said toxic chemical products and failed to provide adequate instructions to Plaintiff, Douglas McCallister, and Plaintiff's employers for the safe handling and use of said toxic chemical products.

72. Plaintiff, Douglas McCallister, was exposed to each of the foregoing toxic chemicals.

73. Each of the toxic chemical products to which Plaintiff, Douglas McCallister, was exposed, was manufactured and/or

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1 supplied by the foregoing defendants, as set forth in the section
2 entitled "Product Identification" above.

3 74. As a result of Plaintiff Douglas McCallister's
4 exposure to the foregoing toxic chemical products, toxins within said
5 toxic chemicals entered Plaintiff, Douglas McCallister's body.

6 75. Plaintiff, Douglas McCallister, suffers from a
7 specific illness, to wit, Myelodysplastic Syndrome, as well as other
8 related and consequential injuries.

9 76. Each of the foregoing toxic chemical products caused
10 Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other
11 injuries.

12 77. Each toxin that entered Plaintiff, Douglas
13 McCallister's body was a substantial factor in bringing about,
14 prolonging, and aggravating Plaintiff, Douglas McCallister's
15 Myelodysplastic Syndrome and other injuries.

16 78. As a direct and proximate result of said negligent
17 acts and omissions of Defendants, Plaintiff, Douglas McCallister,
18 suffers from Myelodysplastic Syndrome and other related and
19 consequential medical conditions.

20 79. As a direct and proximate result of said negligent
21 acts and omissions of Defendants, Plaintiff has been required to
22 expend money and incur obligations for medical and related expenses
23 in an amount not yet determined but which is well in excess of the
24 jurisdictional minimum of the Court, and Plaintiff, Douglas
25 McCallister, has been unable to attend to his usual employment and
26 activities.

27 80. As a further direct and proximate result of the
28 negligent acts and omissions of defendants resulting in his severe

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toxic injuries; Plaintiff, Douglas McCallister, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

81. As a further direct and proximate result of the actions and inactions of defendants resulting in severe toxic injuries, Plaintiff, Douglas McCallister, has suffered and will continue to suffer general damages to be established according to proof at trial.

SECOND CAUSE OF ACTION

NEGLIGENCE PER SE

(By All Plaintiff Against Defendants Aervoe Industries, Inc; Avantor Performance Materials, Inc.; Barnes Group, Inc.; Chemical Packaging Corp.; Citgo Petroleum Corp.; Crafco, Inc.; Gardner-Gibson, Inc.; Illinois Tool Works, Inc.; IPS Corp.; Lbs Enterprises, LLC; Motsenbocker Advanced Developments, Inc.; Premier Farnell Corp.; The Quickrete Companies, Inc.; Radiator Specialty Co.; Sheila Shine, Inc.; T. Christy Enterprises; Titan Laboratories, Inc.; WD-40 Manufacturing Co.; Western Colloid, N.C., Inc.; and Does 1-100)

82. Plaintiff refers to paragraphs 1 through 81 and, by this reference, incorporate said paragraphs as though set forth in full.

83. California Labor Code § 6390.5 is a health and safety statute enacted to protect, among others, employees in the position of Plaintiff, Douglas McCallister, and imposing on manufacturers and distributors of any hazardous substance the duty to label each

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1 container of a hazardous substance in a manner consistent with the
2 Hazard Communication Standard. (8 C.C.R. § 5194).

3 84. The Hazard Communication Standard (8 C.C.R. §5194) is
4 a health and safety regulation promulgated to protect, among others,
5 employees in the position of Plaintiff, Douglas McCallister, and
6 imposing on manufacturers and distributors of chemical products the
7 duty to, among other things:

8 (a) evaluate their products to determine if they are
9 hazardous [8 C.C.R. § 5194(d)(1)];

10 (b) identify and consider the available scientific
11 evidence concerning such hazards [8 C.C.R. § 5194(d)(2) et seq.];

12 (c) consider a product containing at least one
13 percent of a component as presenting the same health hazard as that
14 component [8 C.C.R. § 5194(d)(5)(B)];

15 (d) consider as carcinogenic a product containing at
16 least 0.1% of a component which has been determined under 8 C.C.R.
17 § 5194(d)(4) to be a carcinogen [8 C.C.R. § 5194(d)(5)(B)];

18 (e) consider as hazardous a product which contains
19 a component in a concentration of less than one percent which could
20 be released in concentrations which would exceed the established OSHA
21 permissible exposure limit or ACGIH Threshold Limit Value, or could
22 present a health hazard to employees in those concentrations [8
23 C.C.R. § 5194(d)(5)(D)];

24 (f) consider as carcinogenic a product which contains
25 a component which has been determined under 8 C.C.R. § 5194(d)(4) to
26 be carcinogenic in a concentration of less than .1% which could be
27 released in concentrations which would exceed the established OSHA
28 permissible exposure limit or ACGIH Threshold Limit Value, or could

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present a health hazard to employees in those concentrations [8 C.C.R. § 5194(d)(5)(D)];

(g) ensure that each container of hazardous chemicals leaving their facilities is labeled, tagged or marked with the (i) identity of the hazardous chemical(s); (ii) appropriate hazard warnings; and (iii) the name and address of the chemical manufacturer or other responsible party [8 C.C.R. § 5194(f)(1)];

(h) obtain or develop a material safety data sheet for each hazardous substance they produced [8 C.C.R. § 5194(g)(1)];

(i) include on the material safety data sheet the chemical and common names of each hazardous substance [8 C.C.R. § 5194(g)(2)(A)];

(j) include on the material safety data sheet the health hazards of the hazardous substance, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the substance [8 C.C.R. § 5194(g)(2)(D)];

(k) include on the material safety data sheet the primary routes of entry [8 C.C.R. § 5194(g)(2)(E)];

(l) include on the material safety data sheet the OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by defendants [8 C.C.R. § 5194(g)(2)(F)];

(m) include on the material safety data sheet whether the hazardous chemical is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest editions), or by OSHA [8 C.C.R.

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§ 5194(g)(2)(G)];

(n) include on the material safety data sheet generally applicable precautions for safe handling and use known to defendants, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks [8 C.C.R. § 5194(g)(2)(H)];

(o) include on the material safety data sheet generally applicable control measures known to defendants, such as appropriate engineering controls, work practices, or personal protective equipment [8 C.C.R. § 5194(g)(2)(I)];

(p) include on the material safety data sheet a description in lay terms, if not otherwise provided, of the specific potential health risks posed by the hazardous substance intended to alert the person reading the information [8 C.C.R. § 5194(g)(2)(M)];

(q) ensure that the information contained on material safety data sheets accurately reflects the scientific evidence used in making the hazard determination [8 C.C.R. § 5194(g)(5)];

(r) update material safety data sheets with newly-discovered significant information regarding the hazards of products and/or their components within three months [8 C.C.R. § 5194(g)(5)];
and,

(s) ensure that material safety data sheets complying with the Hazard Communication Standard are provided to employers, directly or via a distributor [8 C.C.R. § 5194(g)(6) & (7)].

85. Defendants are importers, producers, or distributors of toxic chemicals to which Plaintiff, Douglas McCallister, was exposed in the course of employment with various employers, including

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those products manufactured and supplied by Defendants as alleged above, and were obligated to comply with California Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

86. Defendants violated California Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194) in the importation, production, and distribution of the toxic substances to which Plaintiff, Douglas McCallister, was so exposed by, among other things:

(a) failing and refusing to evaluate their products to determine if benzene contained in their products presented a health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(d)(1)];

(b) failing and refusing to identify and consider the available scientific evidence to determine if the benzene contained in their products presented a health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(d)(2) et seq.];

(c) failing and refusing to identify their products as presenting a health hazard of causing Myelodysplastic Syndrome even though the benzene contained in their products presented a health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(d)(5)];

(d) failing and refusing to ensure that each container of their products was labeled, tagged or marked to (i) identity the benzene contained in their products and (ii) appropriately warn that the benzene contained in their products presented a health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(f)(1)];

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(e) failing and refusing to obtain or develop a material safety data sheet for the benzene contained in their products [8 C.C.R. § 5194(g)(1)];

(f) failing and refusing to include on the material safety data sheet the chemical and common names for the benzene contained in their products [8 C.C.R. § 5194(g)(2)(A)];

(g) failing and refusing to include on the material safety data sheet that the benzene contained in their products presented a health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(D)];

(h) failing and refusing to include on the material safety data sheet the primary routes of entry for the benzene contained in their products in respect of the health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(E)];

(i) failing and refusing to include on the material safety data sheet the OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by defendants for the benzene contained in their products in respect of the health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(F)];

(j) failing and refusing to include on the material safety data sheet whether the benzene contained in their products is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC)

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Monographs (latest editions), or by OSHA [8 C.C.R. § 5194(g)(2)(G)];
(k) failing and refusing to include on the material safety data sheet generally applicable precautions for safe handling and use known to Defendants for the benzene contained in their products in respect of preventing the health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(H)];

(l) failing and refusing to include on the material safety data sheet generally applicable control measures known to Defendants for the benzene contained in their products in respect of preventing the health hazard of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(I)];

(m) failing and refusing to include on the material safety data sheet or otherwise the specific potential health risks posed by the benzene contained in their products in respect of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(M)];

(n) failing and refusing to ensure that the information contained on material safety data sheets accurately reflects the scientific evidence of the health risks posed by the benzene contained in their products in respect of causing Myelodysplastic Syndrome to employees using or exposed to their products [8 C.C.R. § 5194(g)(5)];

(o) failing and refusing to update material safety data sheets with newly-discovered significant information regarding the hazards of the benzene contained in their products in respect of causing Myelodysplastic Syndrome to employees using or exposed to

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1 their products [8 C.C.R. § 5194(g)(5)]; and,

2 (p) failing and refusing to ensure that material
3 safety data sheets complying with the Hazard Communication Standard
4 (including specifying the potential health risks posed by the benzene
5 contained in their products in respect of causing Myelodysplastic
6 Syndrome to employees using or exposed to their products) were
7 provided to Plaintiff, Douglas McCallister's employer, various
8 employers, directly or via a distributor. [8 C.C.R. § 5194(g)(6) &
9 (7)].

10 87. Plaintiff, Douglas McCallister, was exposed to each
11 of Defendants' products, including those products manufactured and
12 supplied by Defendants as alleged above, and to the toxic chemicals
13 contained therein and released therefrom, including, but not limited
14 to, benzene, as further alleged above.

15 88. Plaintiff, Douglas McCallister, was a member of the
16 class of persons designed to be protected by California Labor Code
17 § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

18 89. As a result of Plaintiff, Douglas McCallister's
19 exposure to each of Defendants' products, toxic chemicals, including,
20 but not limited to, benzene, entered Plaintiff Douglas McCallister's
21 body and caused Plaintiff to suffer from a specific illness, to wit,
22 Myelodysplastic Syndrome as well as other related and consequential
23 injuries.

24 90. Each of Defendants' products contained a toxic
25 chemical, including, but not limited to, benzene, that entered
26 Plaintiff, Douglas McCallister's body and was a substantial factor
27 in causing, prolonging, and aggravating his Myelodysplastic Syndrome
28 and related injuries.

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91. Plaintiff, Douglas McCallister's injuries, as alleged herein, resulted from an occurrence of the nature of which the statute and regulations were designed to prevent, to wit, injuries to employees from use or exposure to toxic substances at work.

92. As a direct and proximate result of Defendants' negligence per se as alleged herein, Plaintiff, Douglas McCallister, suffers from Myelodysplastic Syndrome, as well as other related and consequential injuries.

93. As a direct and proximate result of said negligent acts and omissions of Defendants, Plaintiff has been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but which is well in excess of the jurisdictional minimum of the Court, and Plaintiff, Douglas McCallister, has been unable to attend to his usual employment and activities.

94. As a further direct and proximate result of the negligent acts and omissions of defendants resulting in his severe toxic injuries, Plaintiff, Douglas McCallister, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

95. As a further direct and proximate result of the actions and inactions of defendants resulting in severe toxic injuries, Plaintiff, Douglas McCallister, has suffered and will continue to suffer general damages to be established according to proof at trial.

///

///

THIRD CAUSE OF ACTION

NEGLIGENCE PER SE FOR MISBRANDING

(By All Plaintiffs Against Defendants Albaugh, Inc.; The Andersons, Inc.; BASF Corp.; Bayer CropScience, Inc., Canada; Bayer CropScience LP; Chevron Corp.; Creative Marketing and Research, Inc.; Creative Sales, Inc.; Crop Production Services, Inc.; Dow AgroSciences LLC; The Dow Chemical Co.; E.I. DuPont de Nemours and Company; Ewing Irrigation Products, Inc.; Horizon Distributors, Inc.; J.R. Simplot Co.; John Deere Landscapes, Inc.; Lawn and Garden Products, Inc.; Lebanon Seaboard Corp.; Lesco, Inc.; Loveland Products, Inc.; Monsanto Co.; PBI-Gordon Corp.; The Scotts Company, L.L.C.; Sierra Pacific Turf Supply, Inc.; Syngenta Crop Protection, LLC; Syngenta Crop Protection Canada, Inc.; United Phosphorus, Inc.; Valent U.S.A., Inc.; Watersavers Irrigation, Inc.; Western Exterminator Co.; Wilco Distributors, Inc.; Zeneca, Inc.; and Does 101-200)

96. Plaintiffs refer to paragraphs 1 through 95 and, by this reference, incorporate said paragraphs herein as though set forth in full.

97. Title 3 of California Code of Regulations section 6210 (3 CCR § 6210) is a health and safety statute enacted to protect, among others, persons in the position of Plaintiff Douglas McCallister, and imposing on the registrant of pesticides the duty to submit to the Director of the EPA factual or scientific evidence of any adverse effect or risk of the pesticide to human health immediately upon obtaining the evidence either during the registration process or at any time after the registration of a

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pesticide.

98. Title 3 of California Code of Regulations section 6242 (3 CCR § 6242) is a health and safety statute enacted to protect, among others, persons in the position of Plaintiff Douglas McCallister, and imposing on the registrant of pesticides the duty to label the pesticides with warning or caution statements which are necessary, and if complied with, adequate to prevent injury to living man.

99. Title 3 of California Code of Regulations Section 6300 (3 CCR §6300) is a health and safety statute enacted to protect, among others, persons in the position of Plaintiff Douglas McCallister, imposing on the registrant of a pesticide a duty not to misbrand its pesticides, which includes the duty not to make any false, misleading, or deceptive claims or statements concerning the safety of the pesticide or its ingredients.

100. Pursuant to Title 3 of California Code of Regulations section 6243, labeling requirements in California for pesticides must meet U.S. EPA labeling requirements, and therefore Title 3 of California Code of Regulations sections 6210, 6242 and 6300 concerning the registration and misbranding of pesticides are the functional equivalent of U.S. EPA labeling requirements.

101. Defendants are registrants, importers, producers, and/or distributors of herbicides and pesticides as defined by California Food and Agricultural Code section 12753, and were obligated to comply with California Code of Regulations sections 6210, 6242 and 6300.

102. Defendants violated Title 3 of California Code of Regulations section 6210 by, among other things, failing to submit

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1 to the Director of the EPA factual or scientific evidence of adverse
2 effects or risks of their pesticides and/or herbicides to human
3 health immediately upon obtaining the evidence either during the
4 registration process or after the registration of their pesticides
5 and/or herbicides.

6 103. Defendants had abundant factual and scientific
7 evidence of serious injuries to persons as a result of their dermal,
8 inhalation, and/or ingestion exposure to Defendants' pesticides
9 and/or herbicides, but Defendants failed to give this evidence to the
10 Director of the EPA either during the registration process or after
11 the registration of their pesticides and/or herbicides.

12 104. Defendants possessed information prior to registering
13 their pesticides and/or herbicides that said pesticides and/or
14 herbicides were toxic to human health, and exposure to said
15 pesticides and/or herbicides can cause serious disease, including
16 Myelodysplastic Syndrome.

17 105. Despite knowledge of the foregoing hazards of their
18 pesticides and/or herbicides, at no time during or after the
19 registration of their pesticides and/or herbicides, did Defendants
20 inform the Director of the EPA, or anyone else at the EPA, that
21 exposure to their pesticides and/or herbicides during the intended
22 use of the products was known to cause severe disease, including
23 Myelodysplastic Syndrome, and at no time did Defendants request the
24 Director of the EPA, or anyone else at the EPA, to provide them with
25 permission to change the approved label for their pesticides and/or
26 herbicides by including warnings or caution statements that the use
27 of their pesticides and/or herbicides is capable of causing exposed
28 users of the product to develop severe disease, including

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1 Myelodysplastic Syndrome.

2 106. Defendants thereby violated Title 3 of California
3 Administrative Code Sections 6210 and 6242 by failing to inform the
4 Director of the EPA, or anyone else at the EPA, during and after the
5 registration of their pesticides and/or herbicides that exposure to
6 their pesticides and/or herbicides during the intended use of the
7 products was known to cause severe disease, including Myelodysplastic
8 Syndrome, and by failing to request the Director of the EPA, or
9 anyone else at the EPA, to provide Defendants with permission to
10 change the approved label for their pesticides and/or herbicides by
11 including warnings or caution statements that the use of their
12 pesticides and/or herbicides is capable of causing exposed users of
13 the product to develop severe disease, including Myelodysplastic
14 Syndrome, all of which were necessary actions because if done by
15 Defendants, would have been adequate to prevent injury to living man,
16 such as Myelodysplastic Syndrome, which inhalation of their
17 pesticides and/or herbicides can cause.

18 107. By said violations of Title 3 of California Code of
19 Regulations sections 6210 and 6242, Defendants thereby violated
20 California Code of Regulations Section 6300 by misbranding their
21 pesticides and/or herbicides, i.e., by making false, misleading, and
22 deceptive claims on the labels of their pesticides and/or herbicides
23 as to the safety of their pesticides and/or herbicides or their
24 ingredients, which were likely to be deceiving or misleading to the
25 users of their pesticides and/or herbicides, such as Plaintiff
26 Douglas McCallister.

27 108. Plaintiff Douglas McCallister was a member of the
28 class of persons designed to be protected by Title 3 of California

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Code of Regulations Sections 6210, 6242, and 6300.

109. In the course of performing his job, Plaintiff Douglas McCallister, was exposed to Defendants' pesticides and/or herbicides.

110. As a result of Plaintiff Douglas McCallister's use of Defendants' pesticides and/or herbicides, said extremely toxic herbicides and/or pesticides entered Plaintiff Douglas McCallister's body both by inhalation and by dermal absorption.

111. Plaintiff, Douglas McCallister, suffers from a specific illness, to wit, Myelodysplastic Syndrome.

112. Each of Defendants' pesticides and/or herbicides were substantial factors in causing Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other injuries.

113. Plaintiff, Douglas McCallister's injuries, as alleged herein, resulted from an occurrence of the nature of which Title 3 of California Code of Regulations Sections 6210, 6242, and 6300 were designed to prevent, to wit, serious injuries to persons from use or exposure to pesticides, as defined by California Food and Agricultural Code section 12753.

114. Plaintiff, Douglas McCallister, was exposed to each of Defendants' products, including those products manufactured and supplied by Defendants as alleged above, and to the toxic chemicals contained therein and released therefrom, including but not limited to dioxin, as further alleged above.

115. Plaintiff, Douglas McCallister, was a member of the class of persons designed to be protected by California Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

116. As a result of Plaintiff Douglas McCallister's exposure to each of Defendants' products, toxic chemicals, including

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Code of Regulations Sections 6210, 6242, and 6300.

109. In the course of performing his job, Plaintiff Douglas McCallister, was exposed to Defendants' pesticides and/or herbicides.

110. As a result of Plaintiff Douglas McCallister's use of Defendants' pesticides and/or herbicides, said extremely toxic herbicides and/or pesticides entered Plaintiff Douglas McCallister's body both by inhalation and by dermal absorption.

111. Plaintiff, Douglas McCallister, suffers from a specific illness, to wit, Myelodysplastic Syndrome.

112. Each of Defendants' pesticides and/or herbicides were substantial factors in causing Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other injuries.

113. Plaintiff, Douglas McCallister's injuries, as alleged herein, resulted from an occurrence of the nature of which Title 3 of California Code of Regulations Sections 6210, 6242, and 6300 were designed to prevent, to wit, serious injuries to persons from use or exposure to pesticides, as defined by California Food and Agricultural Code section 12753.

114. Plaintiff, Douglas McCallister, was exposed to each of Defendants' products, including those products manufactured and supplied by Defendants as alleged above, and to the toxic chemicals contained therein and released therefrom, including but not limited to dioxin, as further alleged above.

115. Plaintiff, Douglas McCallister, was a member of the class of persons designed to be protected by California Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

116. As a result of Plaintiff Douglas McCallister's exposure to each of Defendants' products, toxic chemicals, including

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1 benzene, entered Plaintiff Douglas McCallister's body and caused
2 Plaintiff to suffer from a specific illness, to wit, Myelodysplastic
3 Syndrome as well as other related and consequential injuries.

4 117. Each of Defendants' products contained a toxic
5 chemical, including benzene, that entered Plaintiff, Douglas
6 McCallister's body and was a substantial factor in causing,
7 prolonging, and aggravating his Myelodysplastic Syndrome and related
8 injuries.

9 118. Plaintiff, Douglas McCallister's injuries, as alleged
10 herein, resulted from an occurrence of the nature of which the
11 statute and regulations were designed to prevent, to wit, injuries
12 to employees from use or exposure to toxic substances at work.

13 119. As a direct and proximate result of Defendants'
14 negligence per se as alleged herein, Plaintiff, Douglas McCallister,
15 suffers from Myelodysplastic Syndrome, as well as other related and
16 consequential injuries.

17 120. As a direct and proximate result of said negligent
18 acts and omissions of Defendants, Plaintiffs have been required to
19 expend money and incur obligations for medical and related expenses
20 in an amount not yet determined but which is well in excess of the
21 jurisdictional minimum of the Court, and Plaintiff, Douglas
22 McCallister, has been unable to attend to his usual employment and
23 activities.

24 121. As a further direct and proximate result of the
25 negligent acts and omissions of defendants resulting in his severe
26 toxic injuries, Plaintiff, Douglas McCallister, has suffered lost
27 income and will continue to suffer loss of future income, support and
28 maintenance, all to Plaintiff's damage in a sum to be established

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according to proof.

122. As a further direct and proximate result of the actions and inactions of defendants resulting in severe toxic injuries, Plaintiff, Douglas McCallister, has suffered and will continue to suffer general damages to be established according to proof at trial.

FOURTH CAUSE OF ACTION

FOR STRICT LIABILITY - WARNING DEFECT

(By Plaintiff, Douglas McCallister,

Against Defendants Aervoe Industries, Inc.; Avantor Performance Materials, Inc.; Barnes Group, Inc.; Chemical Packaging Corp.; Citgo Petroleum Corp.; Crafcro, Inc.; Gardner-Gibson, Inc.; Illinois Tool Works, Inc.; IPS Corp.; Lbs Enterprises, LLC; Motsenbocker Advanced Developments, Inc.; Premier Farnell Corp.; The Quikrete Companies, Inc.; Radiator Specialty Co.; Sheila Shine, Inc.; T. Christy Enterprises; Titan Laboratories, Inc.; WD-40 Manufacturing Company; Western Colloid, N.C., Inc.; and Does 1-100)

123. Plaintiff refers to paragraphs 1 through 122 and, by this reference, incorporate said paragraphs hereat as though set forth in full.

124. At all times mentioned herein, defendants were the importers, producers, and distributors of chemical products which were delivered to or used at various employers' facilities located at various locations throughout California, including Los Angeles, where Plaintiff, Douglas McCallister, was exposed to them.

125. The chemical products which Defendants imported,

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1 produced, and distributed to various employers' facilities located
2 at various locations throughout California, including Los Angeles,
3 were defective, because they lacked warnings adequate to apprise
4 Plaintiff and Plaintiff's employers of their toxic hazards and their
5 serious effects upon the human body, and they lacked instructions for
6 handling and use adequate to prevent exposures to Plaintiff causing
7 serious injuries and disease.

8 126. Plaintiff, Douglas McCallister, was exposed to each
9 of the foregoing toxic chemicals.

10 127. Each of the toxic chemical products to which
11 Plaintiff, Douglas McCallister, was exposed, was manufactured and/or
12 supplied by the foregoing defendants, as set forth in the section
13 entitled "Product Identification" above.

14 128. As a result of Plaintiff Douglas McCallister's
15 exposure to the foregoing toxic chemical products, toxins within said
16 toxic chemicals entered Plaintiff, Douglas McCallister's body.

17 129. Plaintiff, Douglas McCallister, suffers from a
18 specific illness, to wit, Myelodysplastic Syndrome, as well as other
19 related and consequential injuries.

20 130. Each of the foregoing toxic chemical products caused
21 Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other
22 injuries.

23 131. Each toxin that entered Plaintiff, Douglas
24 McCallister's body was a substantial factor in bringing about,
25 prolonging, and aggravating Plaintiff, Douglas McCallister's
26 Myelodysplastic Syndrome and other injuries.

27 132. As a direct and proximate result of the defective
28 warnings of Defendants' chemical products, Plaintiff, Douglas

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McCallister, suffers from Myelodysplastic Syndrome and other related and consequential medical conditions.

133. As a direct and proximate result of the defective warnings of Defendants' chemical products, Plaintiff has been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but which is well in excess of the jurisdictional minimum of the Court, and Plaintiff, Douglas McCallister, has been unable to attend to his usual employment and activities.

134. As a further direct and proximate result of the defective warnings of Defendants' chemical products, Plaintiff, Douglas McCallister, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

135. As a further direct and proximate result of defective warnings of Defendants' chemical products, Plaintiff, Douglas McCallister, has suffered and will continue to suffer general damages according to proof at trial.

136. In exposing Plaintiff to said toxic chemicals, Defendants failed to warn Plaintiff of known dangers, consciously disregarded Plaintiff's safety despite knowledge of the probable dangerous consequences of their chemicals, and willfully and deliberately failed to avoid said dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants concealed known toxic hazards of their chemicals from Plaintiff, specifically by

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1 failing to warn Plaintiff of adverse toxic effects of their
2 chemicals, and such hazards were known by and such concealment was
3 ratified by the corporate officers and managers of each of the
4 defendants. Defendants consciously decided to market their chemicals
5 with knowledge of their harmful effects and without remedying the
6 toxic effects of their chemicals, and such marketing despite
7 knowledge of the foregoing toxic hazards of Defendants' products was
8 ratified by the corporate officers and managers of each of the
9 defendants. Defendants also misrepresented the nature of their
10 chemical products, by withholding information from Plaintiff
11 regarding toxic chemicals released from their products during their
12 anticipated or reasonably foreseeable uses, and such
13 misrepresentation and withholding of information was ratified by the
14 corporate officers and managers of each of the defendants.

15 137. Defendants' conduct in exposing Plaintiff to said
16 toxic chemicals without adequate warnings of their toxic hazards and
17 without adequate instructions for safe handling and use was
18 despicable, malicious, oppressive, and perpetrated in conscious
19 disregard of the rights and safety of Plaintiff, entitling Plaintiff
20 to punitive and exemplary damages.

21 FIFTH CAUSE OF ACTION

22 FOR STRICT LIABILITY - DESIGN DEFECT

23 (By Plaintiff, Douglas McCallister,

24 Against All Named Defendants and Does 1-200)

25
26
27 138. Plaintiff refers to paragraphs 1 through 137 and, by
28 this reference, incorporate said paragraphs herein as though set

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1 forth in full.

2 139. At all times mentioned herein, Defendants were the
3 importers, producers, and distributors of chemical products which
4 were delivered to or used at various employers' facilities located
5 at various locations throughout California, including Los Angeles,
6 where Plaintiff, Douglas McCallister, was exposed to them.

7 140. Said chemical products were defective in their design
8 because they failed to perform as safely as an ordinary user would
9 expect when used in an intended or reasonably foreseeable manner,
10 because the risks of using and being exposed to Defendants' products
11 outweighed the benefits of said products, and because safer feasible
12 alternative designs existed which would have made Defendants'
13 products less harmful when used as intended.

14 141. Said design defects existed in Defendants' chemical
15 products when said chemical products left defendants' possession.

16 142. As a direct and proximate result of said design
17 defects, while using said chemical products in a manner that was
18 reasonably foreseeable and intended by Defendants, Plaintiff was
19 exposed to Defendants' chemical products in the course of his
20 employment with various employers, and has suffered serious injuries
21 and disease, including Myelodysplastic Syndrome and other related
22 medical conditions.

23 143. Plaintiff, Douglas McCallister, was exposed to each
24 of the foregoing toxic chemicals.

25 144. Each of the toxic chemical products to which
26 Plaintiff, Douglas McCallister, was exposed, was manufactured and/or
27 supplied by the foregoing defendants, as set forth in the section
28 entitled "Product Identification" above.

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DISEASE, CANCER, AND TOXIC INJURIES

145. As a result of Plaintiff Douglas McCallister's exposure to the foregoing toxic chemical products, toxins within said toxic chemicals entered Plaintiff, Douglas McCallister's body.

146. Plaintiff, Douglas McCallister, suffers from a specific illness, to wit, Myelodysplastic Syndrome, as well as other related and consequential injuries.

147. Each of the foregoing toxic chemical products caused Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other injuries.

148. Each toxin that entered Plaintiff, Douglas McCallister's body was a substantial factor in bringing about, prolonging, and aggravating Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other injuries.

149. As a direct and proximate result of the defective design of Defendants' chemical products, Plaintiff, Douglas McCallister, suffers from Myelodysplastic Syndrome and other related and consequential medical conditions.

150. As a direct and proximate result of the defective design of Defendants' chemical products, Plaintiff has been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but well in excess of the jurisdictional minimum of this Court, and Plaintiff, Douglas McCallister, has been unable to attend to Plaintiff, Douglas McCallister's usual employment and activities.

151. As a further direct and proximate result of the defective design of Defendants' chemical products, Plaintiff, Douglas McCallister, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's

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1 damage in a sum to be established according to proof.

2 152. As a further direct and proximate result of defective
3 nature of said chemical products, Plaintiff, Douglas McCallister, has
4 suffered and will continue to suffer general damages according to
5 proof at trial.

6 153. In exposing Plaintiff to said toxic chemicals,
7 Defendants failed to warn Plaintiff of known dangers, consciously
8 disregarded Plaintiff's safety despite knowledge of the probable
9 dangerous consequences of their chemicals, and willfully and
10 deliberately failed to avoid said dangerous consequences befalling
11 Plaintiff. Defendants were either aware of, or culpably indifferent
12 to, unnecessary risks of injury to Plaintiff and failed and refused
13 to take steps to eliminate or adequately reduce the risk of said
14 dangerous consequences to Plaintiff. Defendants concealed known
15 toxic hazards of their chemicals from Plaintiff, specifically by
16 failing to warn Plaintiff of adverse toxic effects of their
17 chemicals, and such hazards were known by and such concealment was
18 ratified by the corporate officers and managers of each of the
19 defendants. Defendants consciously decided to market their
20 chemicals with knowledge of their harmful effects and without
21 remedying the toxic effects of their chemicals, and such marketing
22 despite knowledge of the foregoing toxic hazards of Defendants'
23 products was ratified by the corporate officers and managers of each
24 of the defendants. Defendants also misrepresented the nature of
25 their chemical products, by withholding information from Plaintiff
26 regarding toxic chemicals released from their products during their
27 anticipated or reasonably foreseeable uses, and such
28 misrepresentation and withholding of information was ratified by the

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corporate officers and managers of each of the defendants.

154. Defendants' conduct in exposing Plaintiff to said toxic chemicals without adequate warnings of their toxic hazards and without adequate instructions for safe handling and use was despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety of Plaintiff, entitling Plaintiff to punitive and exemplary damages.

SIXTH CAUSE OF ACTION

FOR FRAUDULENT CONCEALMENT

(By Plaintiff, Douglas McCallister, Against Defendants Aervoe Industries, Inc.; Avantor Performance Materials, Inc.; Barnes Group, Inc.; Chemical Packaging Corp.; Citgo Petroleum Corp.; Crafcro, Inc.; Gardner-Gibson, Inc.; Illinois Tool Works, Inc.; IPS Corp.; Lbs Enterprises, LLC; Motsenbocker Advanced Developments, Inc.; Premier Farnell Corp.; The Quikrete Companies, Inc.; Radiator Specialty Co.; Sheila Shine, Inc.; T. Christy Enterprises; Titan Laboratories, Inc.; WD-40 Manufacturing Company; Western Colloid, N.C., Inc.; and Does 1-100)

155. Plaintiff refers to paragraphs 1 through 154 and, by this reference, incorporate said paragraphs herein in full.

156. At all times mentioned herein, Defendants were the importers, producers, and distributors of chemical products which were delivered to or used at various employers' facilities located at various locations throughout California, including Los Angeles, where Plaintiff, Douglas McCallister, was exposed to them.

157. Defendants' chemical products to which Plaintiff was

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exposed are toxic.

158. Defendants were aware of the toxic nature of their products.

159. Pursuant to the Hazard Communication Standard and California common law, Defendants were under a legal duty to fully disclose the toxic properties of their products to Plaintiff, Douglas McCallister.

160. Defendants also owed a duty to disclose the toxic properties of their products to Plaintiff, Douglas McCallister, because Defendants alone had knowledge of material facts, to wit the toxic properties of their products, which were not accessible to Plaintiff, Douglas McCallister.

161. Defendants also owed a duty to disclose the toxic properties of their products to Plaintiff, Douglas McCallister, because Defendants made representations regarding their products, but failed to disclose additional facts which materially qualify the facts disclosed, and/or which rendered the disclosures made likely to mislead Plaintiff, Douglas McCallister.

162. Notwithstanding their knowledge of the toxic properties of their chemical products, at all material times hereto, Defendants concealed said toxic hazards from Plaintiff, Douglas McCallister, so that Plaintiff, Douglas McCallister, would use Defendants' chemical products.

163. Plaintiff, Douglas McCallister, was unaware of the toxic hazards of Defendants' chemicals and would not have acted as he did had he known of said concealed hazards.

164. As a direct and proximate result of Defendants' fraudulent concealment of the toxic hazards of their chemical

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products, Plaintiff, Douglas McCallister, was exposed to Defendants' chemical products in the course of his employment with various employers, and has suffered serious injuries and disease, including Myelodysplastic Syndrome and other related medical conditions.

165. Plaintiff, Douglas McCallister, was exposed to each of the foregoing toxic chemicals.

166. Each of the toxic chemical products to which Plaintiff, Douglas McCallister, was exposed, was manufactured and/or supplied by the foregoing defendants, as set forth in the section entitled "Product Identification" above.

167. As a result of Plaintiff Douglas McCallister's exposure to the foregoing toxic chemical products, toxins within said toxic chemicals entered Plaintiff, Douglas McCallister's body.

168. Plaintiff, Douglas McCallister, suffers from a specific illness, to wit, Myelodysplastic Syndrome, as well as other related and consequential injuries.

169. Each of the foregoing toxic chemical products caused Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other injuries.

170. Each toxin that entered Plaintiff, Douglas McCallister's body was a substantial factor in bringing about, prolonging, and aggravating Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other injuries.

171. As a direct and proximate result of Defendants' fraudulent concealment of the toxic hazards of their chemicals, Plaintiff, Douglas McCallister, suffers from Myelodysplastic Syndrome and other related and consequential medical conditions.

172. As a direct and proximate result of Defendants'

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fraudulent concealment of the toxic hazards of their chemicals, Plaintiff has been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but which is well in excess of the jurisdictional minimum of the Court, and Plaintiff, Douglas McCallister, has been unable to attend to his usual employment and activities.

173. As a further direct and proximate result of Defendants' fraudulent concealment of the toxic hazards of their chemical products, Plaintiff, Douglas McCallister, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

174. As a further direct and proximate result of Defendants' fraudulent concealment of the toxic hazards of their chemical products, Plaintiff, Douglas McCallister, has suffered and will continue to suffer general damages to be established according to proof at trial.

175. In exposing Plaintiff to said toxic chemicals, Defendants failed to warn Plaintiff of known dangers, consciously disregarded Plaintiff's safety despite knowledge of the probable dangerous consequences of their chemicals, and willfully and deliberately failed to avoid said dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants concealed known toxic hazards of their chemicals from Plaintiff, specifically by failing to warn Plaintiff of adverse toxic effects of their

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DISEASE, CANCER, AND TOXIC INJURIES

chemicals, and such hazards were known by and such concealment was ratified by the corporate officers and managers of each of the defendants. Defendants consciously decided to market their chemicals with knowledge of their harmful effects and without remedying the toxic effects of their chemicals, and such marketing despite knowledge of the foregoing toxic hazards of Defendants' products was ratified by the corporate officers and managers of each of the defendants. Defendants also misrepresented the nature of their chemical products, by withholding information from Plaintiff regarding toxic chemicals released from their products during their anticipated or reasonably foreseeable uses, and such misrepresentation and withholding of information was ratified by the corporate officers and managers of each of the defendants.

176. Defendants' conduct in exposing Plaintiff to said toxic chemicals without adequate warnings of their toxic hazards and without adequate instructions for safe handling and use was despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety of Plaintiff, entitling Plaintiff to punitive and exemplary damages.

SIXTH CAUSE OF ACTION

FOR BREACH OF IMPLIED WARRANTIES

(By Plaintiff, Douglas McCallister,

Against All Named Defendants and Does 1-200)

177. Plaintiff refers to paragraphs 1 through 176 and, by this reference, incorporate said paragraphs herein as though set forth in full.

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187. At all times mentioned herein, Defendants were the importers, producers, and distributors of chemical products which were purchased by Plaintiff's employers and delivered to or used at various employers' facilities located at various locations throughout California, including Los Angeles, where Plaintiff, Douglas McCallister, was exposed to them.

188. Defendants' chemical products to which Plaintiff was exposed are toxic.

189. By placing their chemical products in the stream of commerce, Defendants impliedly warranted that their chemical products were reasonably fit for their intended uses, that their chemical products were of merchantable quality, that they were not defective, that they would function as safely as ordinary users would expect when used in an intended or reasonably foreseeable manner, and that they would not cause serious disease, harm, or death.

190. Defendants, and each of them, breached said implied warranties, because their toxic chemical products were not reasonably fit for their intended uses, were not of merchantable quality, were defective, and failed to function as safely as an ordinary user would expect when used in an intended or reasonably foreseeable manner, and caused serious injuries to Plaintiff, Douglas McCallister, to wit, Myelodysplastic Syndrome and the other injuries described herein.

191. Plaintiff, Douglas McCallister, was exposed to each of the foregoing toxic chemicals.

192. Each of the toxic chemical products to which Plaintiff, Douglas McCallister, was exposed, was manufactured and/or supplied by the foregoing defendants, as set forth in the section entitled "Product Identification" above.

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184. As a result of Plaintiff Douglas McCallister's exposure to the foregoing toxic chemical products, toxins within said toxic chemicals entered Plaintiff, Douglas McCallister's body.

185. Plaintiff, Douglas McCallister, suffers from a specific illness, to wit, Myelodysplastic Syndrome, as well as other related and consequential injuries.

186. Each of the foregoing toxic chemical products caused Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other injuries.

187. Each toxin that entered Plaintiff, Douglas McCallister's body was a substantial factor in bringing about, prolonging, and aggravating Plaintiff, Douglas McCallister's Myelodysplastic Syndrome and other injuries.

188. As a direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Douglas McCallister, has suffered serious injuries and disease, including Myelodysplastic Syndrome and other related and consequential medical conditions.

189. As a direct and proximate result of Defendants' breaches of implied warranties, Plaintiff has been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but well in excess of the jurisdictional minimum of the Court, and Plaintiff, Douglas McCallister, has been unable to attend to his usual employment and activities.

190. As a further direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Douglas McCallister, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

191. As a further direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Douglas McCallister, has suffered and will continue to suffer general damages according to proof at trial.

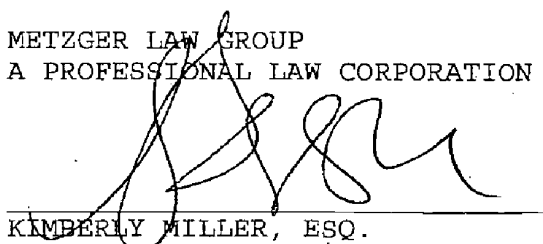
PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgement as follows:

1. For general damages in a sum in excess of the minimum jurisdictional amount of the court;
2. For medical expenses according to proof;
3. For loss of earnings according to proof;
4. For household services according to proof;
5. For pre- and post-judgment interest allowed by law;
6. For punitive damages according to proof;
7. For Plaintiff's costs of suit incurred herein; and,
8. For such other and further relief as the Court deems just and proper.

DATED: August 21, 2012

METZGER LAW GROUP
A PROFESSIONAL LAW CORPORATION


KIMBERLY MILLER, ESQ.
Attorneys for Plaintiff

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191. As a further direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Douglas McCallister, has suffered and will continue to suffer general damages according to proof at trial.

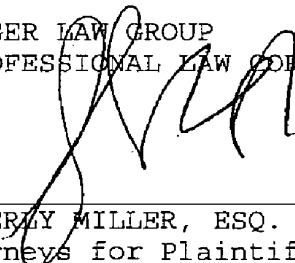
PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgement as follows:

1. For general damages in a sum in excess of the minimum jurisdictional amount of the court;
2. For medical expenses according to proof;
3. For loss of earnings according to proof;
4. For household services according to proof;
5. For pre- and post-judgment interest allowed by law;
6. For punitive damages according to proof;
7. For Plaintiff's costs of suit incurred herein; and,
8. For such other and further relief as the Court deems just and proper.

DATED: August 21, 2012

METZGER LAW GROUP
A PROFESSIONAL LAW CORPORATION


KIMBERLY MILLER, ESQ.
Attorneys for Plaintiff

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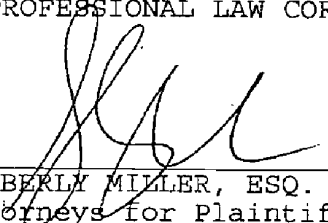
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DEMAND FOR JURY TRIAL

Pursuant to Cal. Code of Civil Procedure § 600 et seq. (and Rule 38 of the Federal Rules of Civil Procedure should this case ever be removed to federal court), Plaintiff hereby demand trial by jury of all issues which may be tried to a jury.

DATED: August 21, 2012

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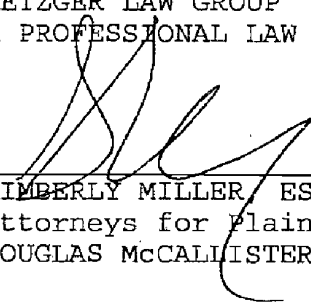
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TO THE PARTIES HERETO AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiff, DOUGLAS McCALLISTER,
hereby posts jury fees of \$150.00.

DATED: August 21, 2012

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DOUGLAS McCALLISTER

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<http://www.toxictorts.com>

Attorneys for Plaintiff,
Douglas McCallister

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

DOUGLAS McCALLISTER,

Plaintiff,

vs.

AERVOE INDUSTRIES INCORPORATED,
formerly known as Aervoe
Pacific Company, Inc., a
Nevada Corporation; ALBAUGH,
INC., doing business in
California as Agristar by
Albaugh, Inc., an Iowa
Corporation; THE ANDERSON,
INC., successor by acquisition
to Scotts Co The ProTurf Div.,
an Ohio Corporation; AVANTOR
PERFORMANCE MATERIALS, INC.,
formerly known as Mallinckrodt
Baker, Inc., formerly known as
J.T. Baker Inc., formerly
known as J.T. Baker Chemical
Company, a New Jersey
Corporation; BARNES GROUP
INC., successor by acquisition
to Kar Products, a Delaware
Corporation; BASF CORPORATION,
a Delaware Corporation; et al.

Defendants.

CASE NO.:

STATEMENT OF DAMAGES

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OF ORIGINAL FILED
Los Angeles Superior Court

AUG 22 2012

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY Deputy

BC490551

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Plaintiff, DOUGLAS McCALLISTER hereby submits a Statement
of Damages as follows:

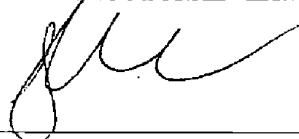
1. General damages consisting of pain and suffering,
caused by the incident, and other injuries described in the Complaint
on file herein, in the sum of \$2,000,000.00.

2. Special damages consisting of medical expenses to
date, totaling approximately \$1,000,000.00, loss of earnings to date
totaling approximately \$60,000.00, estimated cost of future medical
care totaling approximately \$2,000,000.00.

3. Punitive damages in the sum of \$5,000,000.00.

DATED: August 21, 2012

METZGER LAW GROUP
A PROFESSIONAL LAW CORPORATION



KIMBERLY MILLER, ESQ.
Attorneys for Plaintiff,
DOUGLAS McCALLISTER

EXHIBIT 7

Sanchez Complaint



CORPORATION SERVICE COMPANY®

Notice of Service of Process

AZF / ALL
Transmittal Number: 12506076
Date Processed: 05/09/2014

Primary Contact: Anne W Troupis
Monsanto Company
800 N. Lindbergh Blvd
St. Louis, MO 63167

Entity:	Monsanto Company Entity ID Number 2282193
Entity Served:	Monsanto Company
Title of Action:	Natividad Sanchez vs. Argo Logistic Systems, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Product Liability
Court/Agency:	Los Angeles County Superior Court, California
Case/Reference No:	BC542612
Jurisdiction Served:	California
Date Served on CSC:	05/08/2014
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Kimberly Miller 562-437-4499

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT: AGRO LOGISTIC SYSTEMS, INC. a California
(**AVISO AL DEMANDADO**): corporation; **AMTIDE, LLC**, a Delaware limited
liability company; **AMVAC CHEMICAL CORPORATION**, a California
corporation;

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

APR 14 2014

SEE ATTACHMENT FOR ADDITIONAL DEFENDANTS

**YOU ARE BEING SUED BY PLAINTIFF: NATIVIDAD SANCHEZ and
(LO ESTÁ DEMANDANDO EL DEMANDANTE): FRANCISCO SANCHEZ**

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desachar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA
111 No. Hill Street

CASE NUMBER:
(Número del Caso)

BC542612

Los Angeles 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

KIMBERLY MILLER, ESQ. (SBN 97738)

(562) 437-4499

(562) 436-1561

METZGER LAW GROUP

401 E. Ocean Blvd., Suite 800

Long Beach, CA 90802

DATE:

(Fecha)

SHERRI R. CARTER

Clerk, by

CRISTINA GRIJALVA

Deputy

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

APR 14 2014

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Monsanto Company, a Delaware corporation

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.60 (minor)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.70 (conservatee)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

SHORT TITLE: SANCHEZ v. ARGO LOGISTIC SYSTEMS, INC., et al.

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
 → If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☒ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

ARYSTA LIFESCIENCE NORTH AMERICA LLC, formerly doing business as ARYSTA LIFESCIENCE NORTH AMERICA CORPORATION individually, and as successor by acquisition to MICRO FLO COMPANY, a California limited liability company; BASF CORPORATION, individually, and as successor by acquisition to MICRO FLO COMPANY, and as successor by acquisition to WHITMIRE MICRO-GEN RESEARCH LABORATORIES, INC., which may still do business as WHITMIRE MICRO-GEN RESEARCH LABORATORIES, INC., a Delaware corporation; CERTIS U.S.A. LLC, a Delaware limited liability company, CHEMINOVA, INC., a Delaware corporation; DIATECT INTERNATIONAL CORPORATION, a California corporation; E.I. DU PONT DE NEMOURS AND COMPANY, individually and as successor by acquisition to GRIFFIN LLC, which may do business as DU PONT CROP PROTECTION, a Delaware corporation; FMC CORPORATION, a Delaware corporation; GOWAN COMPANY, an Arizona corporation; HELENA CHEMICAL COMPANY, a Delaware corporation; HENKEL CORPORATION, as successor by acquisition to IMPERIAL CHEMICAL INDUSTRIES (ICI), as successor by acquisition to NATIONAL STARCH & CHEMICAL COMPANY, a Delaware corporation; LOVELAND PRODUCTS, Inc., a Colorado corporation; LUBRICATING SPECIALTIES COMPANY, a California corporation; MAKHTESHIM AGAN OF NORTH AMERICA, INC., a Delaware corporation; MCLAUGHLIN GORMLEY KING COMPANY, a Minnesota corporation; MONSANTO COMPANY, a Delaware corporation; OHP, INC., a Pennsylvania corporation; ORCAL, INC., an Oregon corporation; PBI-GORDON CORPORATION, a Missouri corporation; SCHAEFFER MANUFACTURING COMPANY, a Missouri corporation; THE SCOTTS COMPANY LLC, as successor by merger to THE SCOTTS COMPANY, an Ohio limited liability company; THE SHERWIN-WILLIAMS COMPANY, individually, and doing business as SPRAYON PRODUCTS, an Ohio corporation; SYNGENTA CROP PROTECTION, LLC, formerly doing business as SYNGENTA CROP PROTECTION, INC., a Delaware limited liability company; TRICAL, Inc., a California corporation; UNITED PHOSPHORUS, INC., a Delaware corporation; VALENT U.S.A. CORPORATION, which also does business as VALENT BIOSCIENCES CORPORATION, an Illinois corporation; VALUE GARDEN SUPPLY LLC, which also does business as VGS, a Missouri limited liability company; WD-40 MANUFACTURING COMPANY, a California corporation; WILBUR-ELLIS COMPANY is a California corporation; and DOES 1 through 200, INCLUSIVE.

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http://www.toxictorts.com

Attorneys for Plaintiffs,
Natividad Sanchez and Francisco
Sanchez

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 14 2014

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

BC542612

NATIVIDAD SANCHEZ and
FRANCISCO SANCHEZ,

Plaintiffs,

vs.

AGRO LOGISTIC SYSTEMS, INC. a
California corporation; AMTIDE,
LLC, a Delaware limited
liability company; AMVAC
CHEMICAL CORPORATION, a
California corporation; ARYSTA
LIFESCIENCE NORTH AMERICA LLC,
formerly doing business as
ARYSTA LIFESCIENCE NORTH
AMERICA CORPORATION
individually, and as successor
by acquisition to MICRO FLO
COMPANY, a California limited
liability company; BASF
CORPORATION, individually, and
as successor by acquisition to
MICRO FLO COMPANY, and as
successor by acquisition to
WHITMIRE MICRO-GEN RESEARCH
LABORATORIES, INC., which may
still do business as WHITMIRE
MICRO-GEN RESEARCH
LABORATORIES, INC., a Delaware
corporation; CERTIS U.S.A. LLC,
a Delaware limited liability
company, CHEMINOVA, INC., a
Delaware corporation;

) CASE NO.
)
) COMPLAINT FOR TOXIC INJURIES
) ASSERTING CAUSES OF ACTION FOR:
)
) (1) NEGLIGENCE;
) (2) NEGLIGENCE PER SE
) (3) NEGLIGENCE PER SE FOR
) MISBRANDING
) (4) STRICT LIABILITY -
) FAILURE TO WARN;
) (5) STRICT LIABILITY - DESIGN
) DEFECT;
) (6) FRAUDULENT CONCEALMENT;
) (7) BREACH OF IMPLIED
) WARRANTIES
) (8) LOSS OF CONSORTIUM
)
) DEMAND FOR JURY TRIAL [MADE
) PURSUANT TO CALIFORNIA CODE OF
) CIVIL PROCEDURE §§ 600 ET SEQ.
) AND PURSUANT TO RULE 38 OF THE
) FEDERAL RULES OF CIVIL
) PROCEDURE SHOULD THIS CASE EVER
) BE REMOVED TO FEDERAL COURT]

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1 DIATECT INTERNATIONAL)
2 CORPORATION, a California)
3 corporation; E.I. DU PONT DE)
4 NEMOURS AND COMPANY,)
5 individually and as successor)
6 by acquisition to GRIFFIN LLC,)
7 which may do business as DU)
8 PONT CROP PROTECTION, a)
9 Delaware corporation; FMC)
10 CORPORATION, a Delaware)
11 corporation; GOWAN COMPANY, an)
12 Arizona corporation; HELENA)
13 CHEMICAL COMPANY, a Delaware)
14 corporation; HENKEL)
15 CORPORATION, as successor by)
16 acquisition to IMPERIAL)
17 CHEMICAL INDUSTRIES (ICI), as)
18 successor by acquisition to)
19 NATIONAL STARCH & CHEMICAL)
20 COMPANY, a Delaware)
21 corporation; LOVELAND PRODUCTS,)
22 Inc., a Colorado corporation;)
23 LUBRICATING SPECIALTIES)
24 COMPANY, a California)
25 corporation; MAKHTESHIM AGAN OF)
26 NORTH AMERICA, INC., a Delaware)
27 corporation; MCLAUGHLIN GORMLEY)
28 KING COMPANY, a Minnesota)
corporation; MONSANTO COMPANY,)
a Delaware corporation; OHP,)
INC., a Pennsylvania)
corporation; OR-CAL, INC., an)
Oregon corporation; PBI-GORDON)
CORPORATION, a Missouri)
corporation; SCHAEFFER)
MANUFACTURING COMPANY, a)
Missouri corporation; THE)
SCOTTS COMPANY LLC, as)
successor by merger to THE)
SCOTTS COMPANY, an Ohio limited)
liability company; THE SHERWIN-)
WILLIAMS COMPANY, individually,)
and doing business as SPRAYON)
PRODUCTS, an Ohio corporation;)
SYNGENTA CROP PROTECTION, LLC,)
formerly doing business as)
SYNGENTA CROP PROTECTION, INC.,)
a Delaware limited liability)
company; TRICAL, Inc., a)
California corporation; UNITED)
PHOSPHORUS, INC., a Delaware)
corporation; VALENT U.S.A.)
CORPORATION, which also does)
business as VALENT BIOSCIENCES)
CORPORATION, an Illinois)
corporation;)

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1 VALUE GARDEN SUPPLY LLC, which)
2 also does business as VGS, a)
3 Missouri limited liability)
4 company; WD-40 MANUFACTURING)
5 COMPANY, a California)
6 corporation; WILBUR-ELLIS)
7 COMPANY is a California)
8 corporation; and DOES 1 through)
9 200, INCLUSIVE,)
10)
11 Defendants)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

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DISEASE, CANCER, AND TOXIC INJURIES

1 Plaintiffs Natividad Sanchez and Francisco Sanchez hereby
2 allege:

3
4 THE PARTIES

5
6 1. At all material times hereto, Plaintiffs Natividad
7 Sanchez and Francisco Sanchez have been married and residing in the
8 State of California.

9 2. Plaintiffs are informed and believe and thereon allege
10 that Defendant, Agro Logistic Systems, Inc. is a California
11 corporation, which at all material times hereto, was doing business
12 in the County of Los Angeles, State of California.

13 3. Plaintiffs are informed and believe and thereon allege
14 that Defendant, AmTide, LLC, is a Delaware limited liability company,
15 which at all material times hereto, was doing business in the County
16 of Los Angeles, State of California.

17 4. Plaintiffs are informed and believe and thereon allege
18 that Defendant, AMVAC Chemical Corporation, is a California
19 corporation, which at all material times hereto, was doing business
20 in the County of Los Angeles, State of California.

21 5. Plaintiffs are informed and believe and thereon allege
22 that Defendant, Arysta LifeScience North America LLC, which formerly
23 did business as Arysta LifeScience North America Corporation
24 individually, and as successor by acquisition to Micro Flo Company,
25 is a California limited liability company, which at all material
26 times hereto, was doing business in the County of Los Angeles, State
27 of California.

28 6. Plaintiffs are informed and believe and thereon allege

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DISEASE, CANCER, AND TOXIC INJURIES

that Defendant, BASF Corporation, individually, and as successor by acquisition to Micro Flo Company, and as successor by acquisition to Whitmire Micro-Gen Research Laboratories, Inc., which may still do business as Whitmire Micro-Gen Research Laboratories, Inc., is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

7. Plaintiffs are informed and believe and thereon allege that Defendant, Bayer CropScience LP, which also does business as Bayer CropScience Holding, Inc., individually and as successor by acquisition to Aventis CropScience USA, Inc., as successor by merger to Rhone-Poulenc AG Company, is a Delaware limited partnership, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

8. Plaintiffs are informed and believe and thereon allege that Defendant, Certis U.S.A. LLC, is a Delaware limited liability company, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

9. Plaintiffs are informed and believe and thereon allege that Defendant, Cheminova, Inc., is a Delaware corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

10. Plaintiffs are informed and believe and thereon allege that Defendant, Diatect International Corporation is a California corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

11. Plaintiffs are informed and believe and thereon allege that Defendant, E.I. Du Pont De Nemours and Company, individually and as successor by acquisition to Griffin LLC, which may do business as

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DISEASE, CANCER, AND TOXIC INJURIES

1 Du Pont Crop Protection, is a Delaware corporation, which at all
2 material times hereto, was doing business in the County of Los
3 Angeles, State of California.

4 12. Plaintiffs are informed and believe and thereon allege
5 that Defendant, FMC Corporation, is a Delaware corporation, which at
6 all material times hereto, was doing business in the County of Los
7 Angeles, State of California.

8 13. Plaintiffs are informed and believe and thereon allege
9 that Defendant, Gowan Company, is an Arizona corporation, which at
10 all material times hereto, was doing business in the County of Los
11 Angeles, State of California.

12 14. Plaintiffs are informed and believe and thereon allege
13 that Defendant, Helena Chemical Company, is a Delaware corporation,
14 which at all material times hereto, was doing business in the County
15 of Los Angeles, State of California.

16 15. Plaintiffs are informed and believe and thereon allege
17 that Defendant, Henkel Corporation, as successor by acquisition to
18 Imperial Chemical Industries (ICI), as successor by acquisition to
19 National Starch & Chemical Company, is a Delaware corporation, which
20 at all material times hereto, was doing business in the County of Los
21 Angeles, State of California.

22 16. Plaintiffs are informed and believe and thereon allege
23 that Defendant, Loveland Products, Inc., is a Colorado corporation,
24 which at all material times hereto, was doing business in the County
25 of Los Angeles, State of California.

26 17. Plaintiffs are informed and believe and thereon allege
27 that Defendant, Lubricating Specialties Company, is a California
28 corporation, which at all material times hereto, was doing business

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DISEASE, CANCER, AND TOXIC INJURIES

1 in the County of Los Angeles, State of California.

2 18. Plaintiffs are informed and believe and thereon allege
3 that Defendant, Makhteshim Agan of North America, Inc., is a Delaware
4 corporation, which at all material times hereto, was doing business
5 in the County of Los Angeles, State of California.

6 19. Plaintiffs are informed and believe and thereon allege
7 that Defendant, McLaughlin Gormley King Company, is a Minnesota
8 corporation, which at all material times hereto, was doing business
9 in the County of Los Angeles, State of California.

10 20. Plaintiffs are informed and believe and thereon allege
11 that Defendant, Monsanto Company, is a Delaware corporation, which
12 at all material times hereto, was doing business in the County of Los
13 Angeles, State of California.

14 21. Plaintiffs are informed and believe and thereon allege
15 that Defendant, OHP, Inc., is a Pennsylvania corporation, which at
16 all material times hereto, was doing business in the County of Los
17 Angeles, State of California.

18 22. Plaintiffs are informed and believe and thereon allege
19 that Defendant, Or-Cal, Inc., is an Oregon corporation, which at all
20 material times hereto, was doing business in the County of Los
21 Angeles, State of California.

22 23. Plaintiffs are informed and believe and thereon allege
23 that Defendant, PBI-Gordon Corporation, is a Missouri corporation,
24 which at all material times hereto, was doing business in the County
25 of Los Angeles, State of California.

26 24. Plaintiffs are informed and believe and thereon allege
27 that Defendant, Schaeffer Manufacturing Company, is a Missouri
28 corporation, which at all material times hereto, was doing business

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PRACTICE CONCENTRATED IN TOXIC
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DISEASE, CANCER, AND TOXIC INJURIES

1 in the County of Los Angeles, State of California.

2 25. Plaintiffs are informed and believe and thereon allege
3 that Defendant, The Scotts Company LLC, as successor by merger to The
4 Scotts Company, is an Ohio limited liability company, which at all
5 material times hereto, was doing business in the County of Los
6 Angeles, State of California.

7 26. Plaintiffs are informed and believe and thereon allege
8 that Defendant, The Sherwin-Williams Company, individually, and doing
9 business as SprayOn Products, is an Ohio corporation, which at all
10 material times hereto, was doing business in the County of Los
11 Angeles, State of California.

12 27. Plaintiffs are informed and believe and thereon allege
13 that Defendant, Syngenta Crop Protection, LLC, formerly doing
14 business as Syngenta Crop Protection, Inc., is a Delaware limited
15 liability company, which at all material times hereto, was doing
16 business in the County of Los Angeles, State of California.

17 28. Plaintiffs are informed and believe and thereon allege
18 that Defendant, TriCal, Inc., is a California corporation, which at
19 all material times hereto, was doing business in the County of Los
20 Angeles, State of California.

21 29. Plaintiffs are informed and believe and thereon allege
22 that Defendant, United Phosphorus, Inc., is a Delaware corporation,
23 which at all material times hereto, was doing business in the County
24 of Los Angeles, State of California.

25 30. Plaintiffs are informed and believe and thereon allege
26 that Defendant, Valent U.S.A. Corporation, which also does business
27 as Valent BioSciences Corporation, is an Illinois corporation, which
28 at all material times hereto, was doing business in the County of Los

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DISEASE, CANCER, AND TOXIC INJURIES

Angeles, State of California.

31. Plaintiffs are informed and believe and thereon allege that Defendant, Value Garden Supply LLC, which also does business as VGS, is a Missouri limited liability company, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

32. Plaintiffs are informed and believe and thereon allege that Defendant, WD-40 Manufacturing Company, is a California corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

33. Plaintiffs are informed and believe and thereon allege that Defendant, Wilbur-Ellis Company is a California corporation, which at all material times hereto, was doing business in the County of Los Angeles, State of California.

34. The true names and capacities of Defendants Does 1 through 200 are unknown to Plaintiffs, who therefore sues said defendants by such fictitious names. Plaintiffs will amend this complaint to state the true names and capacities of said fictitious defendants when they have been ascertained. Plaintiffs are informed and believe and thereon alleges that Defendants Does 1 through 200 are in some manner responsible for the occurrences herein alleged, and that Plaintiffs' damages as herein alleged were proximately caused by their conduct.

35. Plaintiffs are informed and believe and based thereon allege that, at all times material hereto, each of the Defendants, including the fictitiously named Defendants, was acting in an individual, corporate, partnership, associate, parent-subsidiary, successor-predecessor, conspiratorial or other capacity or as the

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DISEASE, CANCER, AND TOXIC INJURIES

agent, employee, co-conspirator, and/or alter ego of its co-defendants, and in doing the acts herein alleged, was acting within the course and scope of its authority as such parent, successor, partner, associate, agent, employee, co-conspirator, or alter ego, and with the permission, consent, knowledge, authorization, ratification and direction of its co-defendants, including all fictitiously named defendants.

PRODUCT IDENTIFICATION

36. Following is a list of those chemical products thus far identified to which Plaintiff, Natividad Sanchez, was exposed during the course of Plaintiff's employment with various employers throughout California and which caused Plaintiff's toxic injuries and occupational diseases:

Agro Logistic Systems, Inc.

manufacturer and/or supplier of the following products:

Agroneem

and other products to be determined during discovery.

AmTide LLC

manufacturer and/or supplier of the following products:

Imadocloprid 2F

and other products to be determined during discovery.

AMVAC Chemical Corporation

manufacturer and/or supplier of the following products:

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Deadline Bullets

Dibrom 8 Emulsive

Thimet 20-G Soil and Systemic Insecticide

AMVAC Orthene PCO Pellets, AMVAC Orthene 97 Pellets

and other products to be determined during discovery.

Arysta LifeScience North America, LLC. formerly dba Arysta LifeScience
North America Corporation

manufacturer and/or supplier of the following products:

Captec 4L

Elevate 50 WDG Fungicide

and other products to be determined during discovery.

Arysta LifeScience Corporation as successor by acquisition to Micro
Flo Company

manufacturer and/or supplier of the following products:

Captan 50W

Captec 4L

and other products to be determined during discovery.

BASF Corporation

manufacturer and/or supplier of the following products:

Cabrio EG

Duraplex TR

Pristine

Pyramite Miticide/Insecticide

and other products to be determined during discovery.

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BASF Corporation as successor by acquisition to Micro Flo Company
manufacturer and/or supplier of the following products:

Captan 50W

Captec 4L

and other products to be determined during discovery.

BASF Corporation as successor by acquisition to Whitmire Micro-Gen
Research Laboratories, Inc., which may still do business as Whitmire
Micro-Gen Research Laboratories, Inc.

manufacturer and/or supplier of the following products:

DuraGuard ME Microencapsulated Clorpyrifos

and other products to be determined during discovery.

Bayer CropScience LP also dba Bayer CropScience Holding Inc.

manufacturer and/or supplier of the following products:

Admire 2 Flowable Insecticide

Aliette WDG Brand Fungicide

Bayleton 50% Dry Flowable Fungicide

Flint Fungicide

Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide

Oberon 2 SC Insecticide/Miticide

Rovral Fungicide Wettable Powder

Scala Brand SC Fungicide

Sevin Brand 4F Carbaryl Insecticide

Sevin Brand XLR Plus Carbaryl Insecticide

and other products to be determined during discovery.

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Bayer CropScience, LP as successor by acquisition to Aventis
CropScience USA, Inc., as successor by merger to Rhone-Poulenc AG
Company

manufacturer and/or supplier of the following products:

Chipco Sevin 80WSP

and other products to be determined during discovery.

Certis USA LLC

manufacturer and/or supplier of the following products:

Agree WG

Deliver

Neemix 4.5

Trilogy

and other products to be determined during discovery.

Cheminova Inc.

manufacturer and/or supplier of the following products:

Glyfos X-tra Herbicide

and other products to be determined during discovery.

Diatect International Corporation

manufacturer and/or supplier of the following products:

Diatect III Insect Control

Diatect V Insect Control

and other products to be determined during discovery.

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E.I. Du Pont de Nemours & Company

manufacturer and/or supplier of the following products:

DuPont Altacor Insect Control

DuPont Asana XL Insecticide

Benlate SP Fungicide

DuPont Lannate SP Insecticide

and other products to be determined during discovery.

E.I. Du Pont de Nemours & Company as successor by acquisition to

Griffin LLC, which may do business as Du Pont Crop Protection

manufacturer and/or supplier of the following products:

Kocide DF

Manex

and other products to be determined during discovery.

FMC Corporation

manufacturer and/or supplier of the following products:

Brigade WSB Insecticide/Miticide

Mustang Insecticide

Mustang Insecticide

Shark EW Herbicide

and other products to be determined during discovery.

Gowan Company LLC, which also does business as Gowan Company

manufacturer and/or supplier of the following products:

Aza-Direct Biological Insecticide

Hexygon DF

Imidan 70-W

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Malathion 8

Rubigan E.C.

Savey 50 DF

and other products to be determined during discovery.

Helena Chemical Company

manufacturer and/or supplier of the following products:

Eco-Mate Foam Buster

Ele-Max Soil Phosphite 0-60-0

and other products to be determined during discovery.

Henkel Corporation as successor by acquisition to Imperial Chemical Industries (ICI) a successor by acquisition to National Starch & Chemical Company

manufacturer and/or supplier of the following products:

Easy Pac 34-200F

and other products to be determined during discovery.

Loveland Products, Inc.

manufacturer and/or supplier of the following products:

Diazinon AG600 Water-Based Concentrate Insecticide

Dimethoate 2.67 EC

First Choice Gavicide Super 90

Malathion 8 Aquamul

Unfoamer Antifoaming/Defoaming Agent

Widespread Max

and other products to be determined during discovery.

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Lubricating Specialties Company

manufacturer and/or supplier of the following products:

Alaska Glacier FM #2

and other products to be determined during discovery.

Makhteshim Agan of North America, Inc.

manufacturer and/or supplier of the following products:

Diazinon

Diazinon AG500

and other products to be determined during discovery.

McLaughlin Gormley King Company

manufacturer and/or supplier of the following products:

Premium Pyganic Crop Protection EC 1.4

PyGanic Crop Protection EC 5.0 (msds date:02/03/10)

and other products to be determined during discovery.

Monsanto Company

manufacturer and/or supplier of the following products:

Roundup PowerMax Herbicide

Roundup Pro Herbicide

Roundup PROMAX Herbicide

Roundup Ultra Herbicide

Roundup WeatherMAX Herbicide

and other products to be determined during discovery.

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OHP, Inc.

manufacturer and/or supplier of the following products:

Cycocel Plant Growth Regulant

Marathon II Greenhouse and Nursery Insecticide

and other products to be determined during discovery.

Or-Cal, Inc.

manufacturer and/or supplier of the following products:

Slugger 4.0

and other products to be determined during discovery.

PBI-Gordon Corporation

manufacturer and/or supplier of the following products:

Gordon's Trimec Plus

and other products to be determined during discovery.

Schaeffer Manufacturing Company

manufacturer and/or supplier of the following products:

190E Penetro Green H-1

and other products to be determined during discovery.

The Scotts Company LLC as successor by merger to The Scotts Company

manufacturer and/or supplier of the following products:

Scotts Zyban WSB

and other products to be determined during discovery.

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The Sherwin Williams Company

manufacturer and/or supplier of the following products:

Sprayon Citrus Cleaner Degreaser

and other products to be determined during discovery.

The Sherwin Williams Company doing business as Sprayon Products

manufacturer and/or supplier of the following products:

Lu 210 Food Grade Silicone Lubricant Aerosol

and other products to be determined during discovery.

Syngenta Crop Protection, LLC, which formerly did business as

Syngenta Crop Protection, Inc.

manufacturer and/or supplier of the following products:

Agrio-Mek 0.15 EC Miticide/Insecticide

Avid 0.15 EC Miticide/Insecticide

Bravo Weather Stik

Citation Insecticide

Daconil Weather Stik

Epi-Mek 0.15 EC Miticide/Insecticide

Gramoxone Inteon

Gramoxone SL

Heritage Fungicide

Medallion

Ridomil Gold SL

Subdue Maxx

Switch 62.5WG

Tilt

Vanguard WG

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1 and other products to be determined during discovery.

2
3 TriCal, Inc.

4 manufacturer and/or supplier of the following products:

5 MBC-33

6 Pic-Clor 60 EC

7 Tri-Clor Fumigant

8 Tri-Con Preplant Soil Fumigants:

9 Tri-Con 57/43

10 Tri-Con 67/33

11 and other products to be determined during discovery.

12
13 United Phosphorus, Inc.

14 manufacturer and/or supplier of the following products:

15 Assail 70 WP Insecticide

16 Bifenture 10 DF Insecticide/Miticide

17 Topsin M 70% WP

18 Weevil-Cide Tablets, Weevil-Cide Pellets

19 and other products to be determined during discovery.

20
21 Valent USA Corporation also doing business as Valent BioSciences
22 Corporation

23 manufacturer and/or supplier of the following products:

24 Danitol 2.4 EC

25 Dipel DF Biological Insecticide

26 XenTari DF Biological Insecticide

27 Zeal Miticide

28 and other products to be determined during discovery.

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1 Value Garden Supply, LLC, which also does business as VGS
2 manufacturer and/or supplier of the following products:

3 AllPro Carbaryl 50WP

4 and other products to be determined during discovery.

5
6 WD-40 Manufacturing Company

7 manufacturer and/or supplier of the following products:

8 WD-40 Aerosol

9 and other products to be determined during discovery.

10
11 Wilbur-Ellis Company

12 manufacturer and/or supplier of the following products:

13 Sevin 5 Bait

14 and other products to be determined during discovery.

15
16 GENERAL ALLEGATIONS

17
18 37. From about 1989 through 2012, Plaintiff, Natividad
19 Sanchez, worked as a laborer for various employers located throughout
20 California, including Los Angeles. Plaintiffs are informed and
21 believe and thereon allege that the injuries from which Plaintiff,
22 Natividad Sanchez suffers and which are the subject of this action,
23 were sustained in the course of Plaintiff's work for various
24 employers at their facilities located throughout California,
25 including Los Angeles.

26 38. In the course of and throughout Plaintiff's employment
27 with various employers, Plaintiff, Natividad Sanchez, worked with and
28 was exposed to those chemical products hereinafter identified. The

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chemical products which Plaintiff worked with and was exposed to contained significant concentrations of aromatic solvents, aliphatic solvents, naphthenic solvents, other organic solvents, chlorinated solvents, benzene, as well as other toxic chemicals, and pesticides which contain toxins, dioxin and organic solvents, benzene, as well as other toxic chemicals. In the course of her work for various employers, Plaintiff, Natividad Sanchez, was exposed to toxicologically significant levels of these toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals. As a direct and proximate result of said exposure to said toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemical products, Plaintiff, Natividad Sanchez, sustained serious injuries to her internal organs, including Acute Myelogenous Leukemia. As medical treatment for Plaintiff's Acute Myelogenous Leukemia, Plaintiff, Natividad Sanchez, has been hospitalized and undergone surgery and other treatments and will require organ transplantation as medically necessary and lifesaving treatment.

TOLLING OF STATUTE OF LIMITATIONS

Appreciable Injury and Diagnosis Postdating Exposure

39. Plaintiff, Natividad Sanchez, was first diagnosed with Acute Myelogenous Leukemia in or about July 2012. Prior to said time Plaintiffs did not discover, and could not reasonably have discovered, that Plaintiff, Natividad Sanchez, had been injured and was suffering from Acute Myelogenous Leukemia, the toxic nature of said injuries and disease, or their occupational cause. The pathological effect of said disease occurred without perceptible

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1 trauma and Plaintiffs were blamelessly ignorant of its cause. It was
2 not until about July 2012, that Plaintiffs were even aware that
3 Natividad Sanchez, had sustained any appreciable injury.

4
5 Ignorance of Cause of Disease

6 40. At the time Plaintiff, Natividad Sanchez, was
7 diagnosed with Acute Myelogenous Leukemia in or about July 2012, and
8 continuing thereafter until the present date, no physician ever told
9 Plaintiff, Natividad Sanchez, what the cause of Plaintiff's Acute
10 Myelogenous Leukemia was or that Plaintiff's Acute Myelogenous
11 Leukemia even had a cause.

12
13 Suspicion of Cause of Disease

14 41. The first time Plaintiff suspected that Plaintiff,
15 Natividad Sanchez's Acute Myelogenous Leukemia might be
16 occupationally related was in or about July 2012.

17
18 Ignorance of Identity of Injury-Causing Hazardous Substances

19 42. Notwithstanding their diligent efforts, at no time
20 even until the present date did Plaintiffs personally ascertain the
21 identity of those chemical products which caused Natividad Sanchez's
22 Acute Myelogenous Leukemia; nor did Plaintiffs personally ascertain
23 any ingredients or contaminants of the products to which Plaintiff,
24 Natividad Sanchez, was exposed at work that caused Plaintiff
25 Natividad Sanchez's Acute Myelogenous Leukemia; and to this very
26 date, Plaintiffs personally remain ignorant of the identity of
27 hazardous substances to which Plaintiff, Natividad Sanchez was
28 exposed at work that caused Plaintiff, Natividad Sanchez's Acute

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1 Myelogenous Leukemia. It was only after Plaintiffs first met with
2 their attorneys of record in or about April 2013, that Plaintiffs
3 were able to vicariously identify the chemical products which caused
4 Natividad Sanchez's Acute Myelogenous Leukemia and other medical
5 conditions.

6
7 Fraudulent Concealment of Toxic Hazards by Defendants

8 43. At all material times hereto, Defendants fraudulently
9 concealed from Plaintiffs material facts concerning the nature of the
10 chemicals to which Plaintiff, Natividad Sanchez, was exposed.

11 44. At all material times hereto, Defendants fraudulently
12 concealed the toxic hazards of their chemical products from
13 Plaintiffs the hazards of the conditions under which Plaintiff,
14 Natividad Sanchez, was exposed to said chemical products, that
15 Natividad Sanchez was being exposed to and suffering toxic injuries
16 from said chemical products, and the cause of Plaintiff, Natividad
17 Sanchez's injuries and occupational disease.

18 45. At all material times hereto, Defendants fraudulently
19 concealed from Plaintiffs that their products either were
20 carcinogens, contained carcinogenic ingredients, or contained
21 carcinogenic contaminants as a result of manufacturing processes.

22 46. At all material times hereto, Defendants failed to
23 disclose to Plaintiffs toxic hazards of their products, which
24 Defendants were by law required to disclose to Plaintiff, Natividad
25 Sanchez, pursuant to the Hazard Communication Standard and pursuant
26 to California common law.

27 47. Defendants' concealment was sufficiently complete that
28 Plaintiffs did not know, nor in the exercise of reasonable care

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could have known earlier than July of 2012 of Defendants' culpability, that Plaintiff, Natividad Sanchez, had sustained toxic injuries, that chemicals to which Natividad Sanchez, was occupationally exposed had caused Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia, and other injuries, or that Plaintiffs had causes of action arising from Plaintiff, Natividad Sanchez's injuries.

FIRST CAUSE OF ACTION

FOR NEGLIGENCE

(By Plaintiff, Natividad Sanchez,

Against All Named Defendants and Does 1-200)

48. Plaintiff refers to paragraphs 1 through 47 and, by this reference, incorporate said paragraphs hereat as though set forth in full.

49. As chemical manufacturers and distributors, Defendants owed Plaintiff a legal duty to exercise due care in importing, producing, and distributing the foregoing chemical products to various employers at their facilities located at various locations throughout California, including Los Angeles.

50. Defendants negligently and carelessly imported, produced, and distributed the foregoing chemical products to various employers at their facilities located at various locations throughout California, including Los Angeles, where Plaintiff, Natividad Sanchez, was exposed to said toxic chemical products.

51. Defendants also failed to adequately warn Plaintiff, Natividad Sanchez, and Plaintiff's employers, of the hazards of said

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1 toxic chemical products and failed to provide adequate instructions
2 to Plaintiff, Natividad Sanchez, and Plaintiff's employers for the
3 safe handling and use of said toxic chemical products.

4 52. Plaintiff, Natividad Sanchez, was exposed to each of
5 the foregoing toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic
6 and mutagenic chemicals.

7 53. Each of the toxic chemical products to which
8 Plaintiff, Natividad Sanchez, was exposed, was manufactured and/or
9 supplied by the foregoing defendants, as set forth in the section
10 entitled "Product Identification" above.

11 54. As a result of Plaintiff Natividad Sanchez's exposure
12 to the foregoing toxic chemical products, toxins within said toxic,
13 genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic
14 chemicals entered Plaintiff, Natividad Sanchez's body.

15 55. Plaintiff, Natividad Sanchez, suffers from a specific
16 illness, to wit, Acute Myelogenous Leukemia, as well as other related
17 and consequential injuries.

18 56. Each of the foregoing toxic, genotoxic, immunotoxic,
19 hematotoxic, leukemogenic and mutagenic chemicals products caused
20 Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia and other
21 injuries.

22 57. Each toxin that entered Plaintiff, Natividad Sanchez's
23 body was a substantial factor in bringing about, prolonging, and
24 aggravating Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia
25 and other injuries.

26 58. As a direct and proximate result of said negligent
27 acts and omissions of Defendants, Plaintiff, Natividad Sanchez,
28 suffers from Acute Myelogenous Leukemia and other related and

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consequential medical conditions.

59. As a direct and proximate result of said negligent acts and omissions of Defendants, Plaintiffs have been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but which is well in excess of the jurisdictional minimum of the Court, and Plaintiff, Natividad Sanchez, has been unable to attend to her usual employment and activities.

60. As a further direct and proximate result of the negligent acts and omissions of defendants resulting in her severe toxic injuries, Plaintiff, Natividad Sanchez, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

61. As a further direct and proximate result of the actions and inactions of defendants resulting in severe toxic injuries, Plaintiff, Natividad Sanchez, has suffered and will continue to suffer general damages to be established according to proof at trial.

SECOND CAUSE OF ACTION

NEGLIGENCE PER SE

(By All Plaintiffs Against Defendants Helena Chemical Company; Henkel Corporation as successor by acquisition to Imperial Chemical Industries (ICI), as successor by acquisition to National Starch & Chemical Co.; Lubricating Specialties Company; Schaeffer Manufacturing Company; The Sherwin Williams Company individually and doing business as Sprayon Products; WD-40 Manufacturing Company and

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Does 1-100)

62. Plaintiffs refer to paragraphs 1 through 61 and, by this reference, incorporate said paragraphs as though set forth in full.

63. California Labor Code § 6390.5 is a health and safety statute enacted to protect, among others, employees in the position of Plaintiff, Natividad Sanchez, and imposing on manufacturers and distributors of any hazardous substance the duty to label each container of a hazardous substance in a manner consistent with the Hazard Communication Standard. (8 C.C.R. § 5194).

64. The Hazard Communication Standard (8 C.C.R. §5194) is a health and safety regulation promulgated to protect, among others, employees in the position of Plaintiff, Natividad Sanchez, and imposing on manufacturers and distributors of chemical products the duty to, among other things:

(a) evaluate their products to determine if they are hazardous [8 C.C.R. § 5194(d)(1)];

(b) identify and consider the available scientific evidence concerning such hazards [8 C.C.R. § 5194(d)(2) et seq.];

(c) consider a product containing at least one percent of a component as presenting the same health hazard as that component [8 C.C.R. § 5194(d)(5)(B)];

(d) consider as carcinogenic a product containing at least 0.1% of a component which has been determined under 8 C.C.R. § 5194(d)(4) to be a carcinogen [8 C.C.R. § 5194(d)(5)(B)];

(e) consider as hazardous a product which contains a component in a concentration of less than one percent which could

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1 be released in concentrations which would exceed the established OSHA
2 permissible exposure limit or ACGIH Threshold Limit Value, or could
3 present a health hazard to employees in those concentrations [8
4 C.C.R. § 5194(d) (5) (D)];

5 (f) consider as carcinogenic a product which contains
6 a component which has been determined under 8 C.C.R. § 5194(d) (4) to
7 be carcinogenic in a concentration of less than .1% which could be
8 released in concentrations which would exceed the established OSHA
9 permissible exposure limit or ACGIH Threshold Limit Value, or could
10 present a health hazard to employees in those concentrations [8
11 C.C.R. § 5194(d) (5) (D)];

12 (g) ensure that each container of hazardous chemicals
13 leaving their facilities is labeled, tagged or marked with the (i)
14 identity of the hazardous chemical(s); (ii) appropriate hazard
15 warnings; and (iii) the name and address of the chemical manufacturer
16 or other responsible party [8 C.C.R. § 5194(f) (1)];

17 (h) obtain or develop a material safety data sheet for
18 each hazardous substance they produced [8 C.C.R. § 5194(g) (1)];

19 (I) include on the material safety data sheet the
20 chemical and common names of each hazardous substance [8 C.C.R.
21 §5194(g) (2) (A)];

22 (j) include on the material safety data sheet the
23 health hazards of the hazardous substance, including signs and
24 symptoms of exposure, and any medical conditions which are generally
25 recognized as being aggravated by exposure to the substance [8 C.C.R.
26 § 5194 (g) (2) (D)];

27 (k) include on the material safety data sheet the
28 primary routes of entry [8 C.C.R. § 5194(g) (2) (E)];

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(l) include on the material safety data sheet the OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by defendants [8 C.C.R. § 5194 (g) (2) (F)];

(m) include on the material safety data sheet whether the hazardous chemical is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest editions), or by OSHA [8 C.C.R. § 5194 (g) (2) (G)];

(n) include on the material safety data sheet generally applicable precautions for safe handling and use known to defendants, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks [8 C.C.R. § 5194 (g) (2) (H)];

(o) include on the material safety data sheet generally applicable control measures known to defendants, such as appropriate engineering controls, work practices, or personal protective equipment [8 C.C.R. § 5194 (g) (2) (I)];

(p) include on the material safety data sheet a description in lay terms, if not otherwise provided, of the specific potential health risks posed by the hazardous substance intended to alert the person reading the information [8 C.C.R. § 5194 (g) (2) (M)];

(q) ensure that the information contained on material safety data sheets accurately reflects the scientific evidence used in making the hazard determination [8 C.C.R. § 5194 (g) (5)];

(r) update material safety data sheets with newly-

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1 discovered significant information regarding the hazards of products
2 and/or their components within three months [8 C.C.R. § 5194(g)(5)];
3 and,

4 (s) ensure that material safety data sheets complying
5 with the Hazard Communication Standard are provided to employers,
6 directly or via a distributor [8 C.C.R. § 5194(g)(6) & (7)].

7 65. Defendants are importers, producers, or distributors
8 of toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and
9 mutagenic chemicals to which Plaintiff, Natividad Sanchez, was
10 exposed in the course of employment with various employers, including
11 those products manufactured and supplied by Defendants as alleged
12 above, and were obligated to comply with California Labor Code §
13 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

14 66. Defendants violated California Labor Code § 6390.5 and
15 the Hazard Communication Standard (8 C.C.R. §5194) in the
16 importation, production, and distribution of the toxic, genotoxic,
17 immunotoxic, hematotoxic, leukemogenic and mutagenic substances to
18 which Plaintiff, Natividad Sanchez, was so exposed by, among other
19 things:

20 (a) failing and refusing to evaluate their products
21 to determine if toxic, genotoxic, immunotoxic, hematotoxic,
22 leukemogenic and mutagenic chemicals contained in their products
23 presented a health hazard of causing Acute Myelogenous Leukemia to
24 employees using or exposed to their products [8 C.C.R. § 5194(d)(1)];

25 (b) failing and refusing to identify and consider the
26 available scientific evidence to determine if the toxic, genotoxic,
27 immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals
28 contained in their products presented a health hazard of causing

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1 Acute Myelogenous Leukemia to employees using or exposed to their
2 products [8 C.C.R. § 5194(d)(2) et seq.];

3 (c) failing and refusing to identify their products
4 as presenting a health hazard of causing Acute Myelogenous Leukemia
5 even though the toxic, genotoxic, immunotoxic, hematotoxic,
6 leukemogenic and mutagenic chemicals contained in their products
7 presented a health hazard of causing Acute Myelogenous Leukemia to
8 employees using or exposed to their products [8 C.C.R. § 5194(d)(5)];

9 (d) failing and refusing to ensure that each container
10 of their products was labeled, tagged or marked to (i) identity the
11 toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and
12 mutagenic chemicals contained in their products and (ii)
13 appropriately warn that the toxic, genotoxic, immunotoxic,
14 hematotoxic, leukemogenic and mutagenic chemicals contained in their
15 products presented a health hazard of causing Acute Myelogenous
16 Leukemia to employees using or exposed to their products [8 C.C.R.
17 § 5194(f)(1)];

18 (e) failing and refusing to obtain or develop a
19 material safety data sheet for the toxic, genotoxic, immunotoxic,
20 hematotoxic, leukemogenic and mutagenic chemicals contained in their
21 products [8 C.C.R. § 5194(g)(1)];

22 (f) failing and refusing to include on the material
23 safety data sheet the chemical and common names for the toxic,
24 genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic
25 chemicals contained in their products [8 C.C.R. § 5194(g)(2)(A)];

26 (g) failing and refusing to include on the material
27 safety data sheet that the toxic, genotoxic, immunotoxic,
28 hematotoxic, leukemogenic and mutagenic chemicals contained in their

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products presented a health hazard of causing Acute Myelogenous Leukemia to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(D)];

(h) failing and refusing to include on the material safety data sheet the primary routes of entry for the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals contained in their products in respect of the health hazard of causing Acute Myelogenous Leukemia to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(E)];

(I) failing and refusing to include on the material safety data sheet the OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by defendants for the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals contained in their products in respect of the health hazard of causing Acute Myelogenous Leukemia to employees using or exposed to their products [8 C.C.R. § 5194(g)(2)(F)];

(j) failing and refusing to include on the material safety data sheet whether the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals contained in their products is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest editions), or by OSHA [8 C.C.R. § 5194(g)(2)(G)];

(k) failing and refusing to include on the material safety data sheet generally applicable precautions for safe handling and use known to Defendants for the toxic, genotoxic, immunotoxic,

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1 hematotoxic, leukemogenic and mutagenic chemicals contained in their
2 products in respect of preventing the health hazard of causing Acute
3 Myelogenous Leukemia to employees using or exposed to their products
4 [8 C.C.R. § 5194(g) (2) (H)];

5 (l) failing and refusing to include on the material
6 safety data sheet generally applicable control measures known to
7 Defendants for the toxic, genotoxic, immunotoxic, hematotoxic,
8 leukemogenic and mutagenic chemicals contained in their products in
9 respect of preventing the health hazard of causing Acute Myelogenous
10 Leukemia to employees using or exposed to their products [8 C.C.R.
11 § 5194(g) (2) (I)];

12 (m) failing and refusing to include on the material
13 safety data sheet or otherwise the specific potential health risks
14 posed by the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic
15 and mutagenic chemicals contained in their products in respect of
16 causing Acute Myelogenous Leukemia to employees using or exposed to
17 their products [8 C.C.R. § 5194(g) (2) (M)];

18 (n) failing and refusing to ensure that the
19 information contained on material safety data sheets accurately
20 reflects the scientific evidence of the health risks posed by the
21 toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and
22 mutagenic chemicals contained in their products in respect of causing
23 Acute Myelogenous Leukemia to employees using or exposed to their
24 products [8 C.C.R. § 5194(g) (5)];

25 (o) failing and refusing to update material safety
26 data sheets with newly-discovered significant information regarding
27 the hazards of the toxic, genotoxic, immunotoxic, hematotoxic,
28 leukemogenic and mutagenic chemicals contained in their products in

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respect of causing Acute Myelogenous Leukemia to employees using or exposed to their products [8 C.C.R. § 5194(g)(5)]; and,

(p) failing and refusing to ensure that material safety data sheets complying with the Hazard Communication Standard (including specifying the potential health risks posed by the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals contained in their products in respect of causing Acute Myelogenous Leukemia to employees using or exposed to their products) were provided to Plaintiff, Natividad Sanchez's employer, various employers, directly or via a distributor. [8 C.C.R. § 5194(g)(6) & (7).

67. Plaintiff, Natividad Sanchez, was exposed to each of Defendants' products, including those products manufactured and supplied by Defendants as alleged above, and to the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals contained therein and released therefrom, including, but not limited to, benzene and other toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals, as further alleged above.

68. Plaintiff, Natividad Sanchez, was a member of the class of persons designed to be protected by California Labor Code § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

69. As a result of Plaintiff, Natividad Sanchez's exposure to each of Defendants' products, toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals, including, but not limited to, benzene, entered Plaintiff Natividad Sanchez's body and caused Plaintiff to suffer from a specific illness, to wit, Acute Myelogenous Leukemia as well as other related and consequential injuries.

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70. Each of Defendants' products contained toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals, including, but not limited to, benzene, that entered Plaintiff, Natividad Sanchez's body and was a substantial factor in causing, prolonging, and aggravating her Acute Myelogenous Leukemia and related injuries.

71. Plaintiff, Natividad Sanchez's injuries, as alleged herein, resulted from an occurrence of the nature of which the statute and regulations were designed to prevent, to wit, injuries to employees from use or exposure to toxic substances at work.

72. As a direct and proximate result of Defendants' negligence per se as alleged herein, Plaintiff, Natividad Sanchez, suffers from Acute Myelogenous Leukemia, as well as other related and consequential injuries.

73. As a direct and proximate result of said negligent acts and omissions of Defendants, Plaintiffs have been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but which is well in excess of the jurisdictional minimum of the Court, and Plaintiff, Natividad Sanchez, has been unable to attend to her usual employment and activities.

74. As a further direct and proximate result of the negligent acts and omissions of defendants resulting in her severe toxic injuries, Plaintiff, Natividad Sanchez, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

75. As a further direct and proximate result of the

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actions and inactions of defendants resulting in severe toxic injuries, Plaintiff, Natividad Sanchez, has suffered and will continue to suffer general damages to be established according to proof at trial.

THIRD CAUSE OF ACTION

NEGLIGENCE PER SE FOR MISBRANDING

(By All Plaintiffs Against Defendants Agro Logistic Systems, Inc.; AmTide LLC; AMVAC Chemical Corporation; Arysta LifeScience North America, LLC, formerly Arysta LifeScience North America Corporation individually, and as successor by acquisition to Micro Flo Company; BASF Corporation individually, and as successor by acquisition to Micro Flo Company, and as successor by acquisition to Whitmire Micro-Gen Research Laboratories, Inc.; Bayer CropScience LP, which also does business as Bayer CropScience Holding, Inc., individually and as successor by acquisition to Aventis CropScience USA, inc., as successor by merger to Rhone-Poulenc AG Company; Certis USA LLC; Cheminova Inc.; Diatect International Corporation; E.I. Du Pont de Nemours & Company individually and as successor by acquisition to Griffin LLC; FMC Corporation; Gowan Company LLC; Loveland Products, Inc.; Makhteshim Agan of North America, Inc.; McLaughlin Gormley King Company; Monsanto Company; OHP, Inc.; OrCal, Inc.; PBI-Gordon Corporation; The Scotts Company LLC as successor by merger to The Scotts Company; Syngenta Crop Protection LLC, formerly Syngenta Crop Protection, Inc.; TriCal, Inc.; United Phosphorus, Inc.; Valent USA Corp., also doing business as Valent BioSciences Corp.; Value Garden Supply, LLC, which also does business as VGS; Wilbur-Ellis Company; and Does 101-200)

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1 76. Plaintiffs refer to paragraphs 1 through 75 and, by
2 this reference, incorporate said paragraphs herein as though set
3 forth in full.

4 77. Title 3 of California Code of Regulations section 6210
5 (3 CCR § 6210) is a health and safety statute enacted to protect,
6 among others, persons in the position of Plaintiff Natividad Sanchez,
7 and imposing on the registrant of pesticides the duty to submit to
8 the Director of the EPA factual or scientific evidence of any adverse
9 effect or risk of the pesticide to human health immediately upon
10 obtaining the evidence either during the registration process or at
11 any time after the registration of a pesticide.

12 78. Title 3 of California Code of Regulations section 6242
13 (3 CCR § 6242) is a health and safety statute enacted to protect,
14 among others, persons in the position of Plaintiff, Natividad
15 Sanchez, and imposing on the registrant of pesticides the duty to
16 label the pesticides with warning or caution statements which are
17 necessary, and if complied with, adequate to prevent injury to living
18 man.

19 79. Title 3 of California Code of Regulations Section 6300
20 (3 CCR §6300) is a health and safety statute enacted to protect,
21 among others, persons in the position of Plaintiff, Natividad
22 Sanchez, imposing on the registrant of a pesticide a duty not to
23 misbrand its pesticides, which includes the duty not to make any
24 false, misleading, or deceptive claims or statements concerning the
25 safety of the pesticide or its ingredients.

26 80. Pursuant to Title 3 of California Code of Regulations
27 section 6243, labeling requirements in California for pesticides must
28 meet U.S. EPA labeling requirements, and therefore Title 3 of

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California Code of Regulations sections 6210, 6242 and 6300 concerning the registration and misbranding of pesticides are the functional equivalent of U.S. EPA labeling requirements.

81. Defendants are registrants, importers, producers, and/or distributors of herbicides and pesticides as defined by California Food and Agricultural Code section 12753, and were obligated to comply with California Code of Regulations sections 6210, 6242 and 6300.

82. Defendants violated Title 3 of California Code of Regulations section 6210 by, among other things, failing to submit to the Director of the EPA factual or scientific evidence of adverse effects or risks of their pesticides and/or herbicides to human health immediately upon obtaining the evidence either during the registration process or after the registration of their pesticides and/or herbicides.

83. Defendants had abundant factual and scientific evidence of serious injuries to persons as a result of their dermal, inhalation, and/or ingestion exposure to Defendants' pesticides and/or herbicides, but Defendants failed to give this evidence to the Director of the EPA either during the registration process or after the registration of their pesticides and/or herbicides.

84. Defendants possessed information prior to registering their pesticides and/or herbicides that said pesticides and/or herbicides were toxic to human health, and exposure to said pesticides and/or herbicides can cause serious disease, including Acute Myelogenous Leukemia.

85. Despite knowledge of the foregoing hazards of their pesticides and/or herbicides, at no time during or after the

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1 registration of their pesticides and/or herbicides, did Defendants
2 inform the Director of the EPA, or anyone else at the EPA, that
3 exposure to their pesticides and/or herbicides during the intended
4 use of the products was known to cause severe disease, including
5 Acute Myelogenous Leukemia, and at no time did Defendants request the
6 Director of the EPA, or anyone else at the EPA, to provide them with
7 permission to change the approved label for their pesticides and/or
8 herbicides by including warnings or caution statements that the use
9 of their pesticides and/or herbicides is capable of causing exposed
10 users of the product to develop severe disease, including Acute
11 Myelogenous Leukemia.

12 86. Defendants thereby violated Title 3 of California
13 Administrative Code Sections 6210 and 6242 by failing to inform the
14 Director of the EPA, or anyone else at the EPA, during and after the
15 registration of their pesticides and/or herbicides that exposure to
16 their pesticides and/or herbicides during the intended use of the
17 products was known to cause severe disease, including Acute
18 Myelogenous Leukemia, and by failing to request the Director of the
19 EPA, or anyone else at the EPA, to provide Defendants with permission
20 to change the approved label for their pesticides and/or herbicides
21 by including warnings or caution statements that the use of their
22 pesticides and/or herbicides is capable of causing exposed users of
23 the product to develop severe disease, including Acute Myelogenous
24 Leukemia, all of which were necessary actions because if done by
25 Defendants, would have been adequate to prevent injury to living man,
26 such as Acute Myelogenous Leukemia, which inhalation of their
27 pesticides and/or herbicides can cause.

28 87. By said violations of Title 3 of California Code of

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Regulations sections 6210 and 6242, Defendants thereby violated California Code of Regulations Section 6300 by misbranding their pesticides and/or herbicides, i.e., by making false, misleading, and deceptive claims on the labels of their pesticides and/or herbicides as to the safety of their pesticides and/or herbicides or their ingredients, which were likely to be deceiving or misleading to the users of their pesticides and/or herbicides, such as Plaintiff Natividad Sanchez.

88. Plaintiff Natividad Sanchez was a member of the class of persons designed to be protected by Title 3 of California Code of Regulations Sections 6210, 6242, and 6300.

89. In the course of performing her job, Plaintiff Natividad Sanchez, was exposed to Defendants' pesticides and/or herbicides.

90. As a result of Plaintiff Natividad Sanchez's use of Defendants' pesticides and/or herbicides, said extremely toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic herbicides and/or pesticides entered Plaintiff Natividad Sanchez's body both by inhalation and by dermal absorption.

91. Plaintiff, Natividad Sanchez, suffers from a specific illness, to wit, Acute Myelogenous Leukemia.

92. Each of Defendants' pesticides and/or herbicides were substantial factors in causing Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia and other injuries.

93. Plaintiff, Natividad Sanchez's injuries, as alleged herein, resulted from an occurrence of the nature of which Title 3 of California Code of Regulations Sections 6210, 6242, and 6300 were designed to prevent, to wit, serious injuries to persons from use or

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1 exposure to pesticides, as defined by California Food and
2 Agricultural Code section 12753.

3 94. Plaintiff, Natividad Sanchez, was exposed to each of
4 Defendants' products, including those products manufactured and
5 supplied by Defendants as alleged above, and to the toxic, genotoxic,
6 immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals
7 contained therein and released therefrom, including but not limited
8 to benzene, as further alleged above.

9 95. Plaintiff, Natividad Sanchez, was a member of the
10 class of persons designed to be protected by California Labor Code
11 § 6390.5 and the Hazard Communication Standard (8 C.C.R. § 5194).

12 96. As a result of Plaintiff Natividad Sanchez's exposure
13 to each of Defendants' products, toxic, genotoxic, immunotoxic,
14 hematotoxic, leukemogenic and mutagenic chemicals, including benzene,
15 entered Plaintiff Natividad Sanchez's body and caused Plaintiff to
16 suffer from a specific illness, to wit, Acute Myelogenous Leukemia
17 as well as other related and consequential injuries.

18 97. Each of Defendants' products contained a toxic,
19 genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic
20 chemical, including benzene, that entered Plaintiff, Natividad
21 Sanchez's body and was a substantial factor in causing, prolonging,
22 and aggravating her Acute Myelogenous Leukemia and related injuries.

23 98. Plaintiff, Natividad Sanchez's injuries, as alleged
24 herein, resulted from an occurrence of the nature of which the
25 statute and regulations were designed to prevent, to wit, injuries
26 to employees from use or exposure to toxic substances at work.

27 99. As a direct and proximate result of Defendants'
28 negligence per se as alleged herein, Plaintiff, Natividad Sanchez,

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suffers from Acute Myelogenous Leukemia, as well as other related and consequential injuries.

100. As a direct and proximate result of said negligent acts and omissions of Defendants, Plaintiffs have been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but which is well in excess of the jurisdictional minimum of the Court, and Plaintiff, Natividad Sanchez, has been unable to attend to her usual employment and activities.

101. As a further direct and proximate result of the negligent acts and omissions of defendants resulting in her severe toxic injuries, Plaintiff, Natividad Sanchez, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

102. As a further direct and proximate result of the actions and inactions of defendants resulting in severe toxic injuries, Plaintiff, Natividad Sanchez, has suffered and will continue to suffer general damages to be established according to proof at trial.

FOURTH CAUSE OF ACTION

FOR STRICT LIABILITY - WARNING DEFECT

(By All Plaintiffs, Against Defendants Helena Chemical Company; Henkel Corporation as successor by acquisition to Imperial Chemical Industries (ICI), as successor by acquisition to National Starch & Chemical Co.; Lubricating Specialties Company; Schaeffer Manufacturing Company; The Sherwin Williams Company individually and

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1 doing business as Sprayon Products; WD-40 Manufacturing Company and
2 Does 1-100)

3
4 103. Plaintiffs refer to paragraphs 1 through 102 and, by
5 this reference, incorporate said paragraphs hereat as though set
6 forth in full.

7 104. At all times mentioned herein, defendants were the
8 importers, producers, and distributors of chemical products which
9 were delivered to or used at various employers' facilities located
10 at various locations throughout California, including Los Angeles,
11 where Plaintiff, Natividad Sanchez, was exposed to them.

12 105. The chemical products which Defendants imported,
13 produced, and distributed to Plaintiff's various employers'
14 facilities located at various locations throughout California,
15 including Los Angeles, were defective, because they lacked warnings
16 adequate to apprise Plaintiff and Plaintiff's employers of their
17 toxic hazards and their serious effects upon the human body, and they
18 lacked instructions for handling and use adequate to prevent
19 exposures to Plaintiff causing serious injuries and disease.

20 106. Plaintiff, Natividad Sanchez, was exposed to each of
21 the foregoing toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic
22 and mutagenic chemicals.

23 107. Each of the toxic chemical products to which
24 Plaintiff, Natividad Sanchez, was exposed, was manufactured and/or
25 supplied by the foregoing defendants, as set forth in the section
26 entitled "Product Identification" above.

27 108. As a result of Plaintiff Natividad Sanchez's exposure
28 to the foregoing toxic chemical products, toxins within said toxic,

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1 genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic
2 chemicals entered Plaintiff, Natividad Sanchez's body.

3 109. Plaintiff, Natividad Sanchez, suffers from a specific
4 illness, to wit, Acute Myelogenous Leukemia, as well as other related
5 and consequential injuries.

6 110. Each of the foregoing toxic chemical products caused
7 Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia and other
8 injuries.

9 111. Each toxin that entered Plaintiff, Natividad
10 Sanchez's body was a substantial factor in bringing about,
11 prolonging, and aggravating Plaintiff, Natividad Sanchez's Acute
12 Myelogenous Leukemia and other injuries.

13 112. As a direct and proximate result of the defective
14 warnings of Defendants' chemical products, Plaintiff, Natividad
15 Sanchez, suffers from Acute Myelogenous Leukemia and other related
16 and consequential medical conditions.

17 113. As a direct and proximate result of the defective
18 warnings of Defendants' chemical products, Plaintiffs have been
19 required to expend money and incur obligations for medical and
20 related expenses in an amount not yet determined but which is well
21 in excess of the jurisdictional minimum of the Court, and Plaintiff,
22 Natividad Sanchez, has been unable to attend to her usual employment
23 and activities.

24 114. As a further direct and proximate result of the
25 defective warnings of Defendants' chemical products, Plaintiff,
26 Natividad Sanchez, has suffered lost income and will continue to
27 suffer loss of future income, support and maintenance, all to
28 Plaintiff's damage in a sum to be established according to proof.

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115. As a further direct and proximate result of defective warnings of Defendants' chemical products, Plaintiff, Natividad Sanchez, has suffered and will continue to suffer general damages according to proof at trial.

116. In exposing Plaintiff to said toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals, Defendants failed to warn Plaintiff of known dangers, consciously disregarded Plaintiff's safety despite knowledge of the probable dangerous consequences of their chemicals, and willfully and deliberately failed to avoid said dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants concealed known toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic hazards of their chemicals from Plaintiff, specifically by failing to warn Plaintiff of adverse toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic effects of their chemicals, and such hazards were known by and such concealment was ratified by the corporate officers and managers of each of the defendants. Defendants consciously decided to market their chemicals with knowledge of their harmful effects and without remedying the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic effects of their chemicals, and such marketing despite knowledge of the foregoing toxic hazards of Defendants' products was ratified by the corporate officers and managers of each of the defendants. Defendants also misrepresented the nature of their chemical products, by withholding information from Plaintiff regarding toxic, genotoxic,

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1 immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals
2 released from their products during their anticipated or reasonably
3 foreseeable uses, and such misrepresentation and withholding of
4 information was ratified by the corporate officers and managers of
5 each of the defendants.

6 117. Defendants' conduct in exposing Plaintiff to said
7 toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and
8 mutagenic chemicals without adequate warnings of their toxic hazards
9 and without adequate instructions for safe handling and use was
10 despicable, malicious, oppressive, and perpetrated in conscious
11 disregard of the rights and safety of Plaintiff, entitling Plaintiff
12 to punitive and exemplary damages.

13
14 **FIFTH CAUSE OF ACTION**

15 **FOR STRICT LIABILITY - DESIGN DEFECT**

16 (By Plaintiff, Natividad Sanchez,
17 Against All Named Defendants and Does 1-200)

18
19 118. Plaintiff refers to paragraphs 1 through 117 and, by
20 this reference, incorporate said paragraphs herein as though set
21 forth in full.

22 119. At all times mentioned herein, Defendants were the
23 importers, producers, and distributors of chemical products which
24 were delivered to or used at Plaintiff's various employers'
25 facilities located at various locations throughout California,
26 including Los Angeles, where Plaintiff, Natividad Sanchez, was
27 exposed to them.

28 120. Said chemical products were defective in their design

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1 because they failed to perform as safely as an ordinary user would
2 expect when used in an intended or reasonably foreseeable manner,
3 because the risks of using and being exposed to Defendants' products
4 outweighed the benefits of said products, and because safer feasible
5 alternative designs existed which would have made Defendants'
6 products less harmful when used as intended.

7 121. Said design defects existed in Defendants' chemical
8 products when said chemical products left defendants' possession.

9 122. As a direct and proximate result of said design
10 defects, while using said chemical products in a manner that was
11 reasonably foreseeable and intended by Defendants, Plaintiff was
12 exposed to Defendants' chemical products in the course of her
13 employment with various employers, and has suffered serious injuries
14 and disease, including Acute Myelogenous Leukemia and other related
15 medical conditions.

16 123. Plaintiff, Natividad Sanchez, was exposed to each of
17 the foregoing toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic
18 and mutagenic chemicals.

19 124. Each of the toxic chemical products to which
20 Plaintiff, Natividad Sanchez, was exposed, was manufactured and/or
21 supplied by the foregoing defendants, as set forth in the section
22 entitled "Product Identification" above.

23 125. As a result of Plaintiff Natividad Sanchez's exposure
24 to the foregoing toxic chemical products, toxins within said toxic,
25 genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic
26 chemicals entered Plaintiff, Natividad Sanchez's body.

27 126. Plaintiff, Natividad Sanchez, suffers from a specific
28 illness, to wit, Acute Myelogenous Leukemia, as well as other related

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1 and consequential injuries.

2 127. Each of the foregoing toxic chemical products caused
3 Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia and other
4 injuries.

5 128. Each toxin that entered Plaintiff, Natividad
6 Sanchez's body was a substantial factor in bringing about,
7 prolonging, and aggravating Plaintiff, Natividad Sanchez's Acute
8 Myelogenous Leukemia and other injuries.

9 129. As a direct and proximate result of the defective
10 design of Defendants' chemical products, Plaintiff, Natividad
11 Sanchez, suffers from Acute Myelogenous Leukemia and other related
12 and consequential medical conditions.

13 130. As a direct and proximate result of the defective
14 design of Defendants' chemical products, Plaintiffs have been
15 required to expend money and incur obligations for medical and
16 related expenses in an amount not yet determined but well in excess
17 of the jurisdictional minimum of this Court, and Plaintiff, Natividad
18 Sanchez, has been unable to attend to Plaintiff, Natividad Sanchez's
19 usual employment and activities.

20 131. As a further direct and proximate result of the
21 defective design of Defendants' chemical products, Plaintiff,
22 Natividad Sanchez, has suffered lost income and will continue to
23 suffer loss of future income, support and maintenance, all to
24 Plaintiff's damage in a sum to be established according to proof.

25 132. As a further direct and proximate result of defective
26 nature of said chemical products, Plaintiff, Natividad Sanchez, has
27 suffered and will continue to suffer general damages according to
28 proof at trial.

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1 misrepresentation and withholding of information was ratified by the
2 corporate officers and managers of each of the defendants.

3 134. Defendants' conduct in exposing Plaintiff to said
4 toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and
5 mutagenic chemicals without adequate warnings of their toxic hazards
6 and without adequate instructions for safe handling and use was
7 despicable, malicious, oppressive, and perpetrated in conscious
8 disregard of the rights and safety of Plaintiff, entitling Plaintiff
9 to punitive and exemplary damages.

10
11 SIXTH CAUSE OF ACTION

12 FOR FRAUDULENT CONCEALMENT.

13 (By All Plaintiffs, Against Defendants Helena Chemical Company;
14 Henkel Corporation as successor by acquisition to Imperial Chemical
15 Industries (ICI), as successor by acquisition to National Starch &
16 Chemical Co.; Lubricating Specialties Company; Schaeffer
17 Manufacturing Company; The Sherwin Williams Company individually and
18 doing business as Sprayon Products; WD-40 Manufacturing Company and
19 Does 1-100)

20
21 135. Plaintiff refers to paragraphs 1 through 134 and, by
22 this reference, incorporate said paragraphs herein in full.

23 136. At all times mentioned herein, Defendants were the
24 importers, producers, and distributors of chemical products which
25 were delivered to or used at various employers' facilities located
26 at various locations throughout California, including Los Angeles,
27 where Plaintiff, Natividad Sanchez, was exposed to them.

28 137. Defendants' chemical products to which Plaintiff was

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exposed are toxic.

138. Defendants were aware of the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic nature of their products.

139. Pursuant to the Hazard Communication Standard and California common law, Defendants were under a legal duty to fully disclose the toxic properties of their products to Plaintiff, Natividad Sanchez.

140. Defendants also owed a duty to disclose the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic properties of their products to Plaintiff, Natividad Sanchez, because Defendants alone had knowledge of material facts, to wit the toxic properties of their products, which were not accessible to Plaintiff, Natividad Sanchez.

141. Defendants also owed a duty to disclose the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic properties of their products to Plaintiff, Natividad Sanchez, because Defendants made representations regarding their products, but failed to disclose additional facts which materially qualify the facts disclosed, and/or which rendered the disclosures made likely to mislead Plaintiff, Natividad Sanchez.

142. Notwithstanding their knowledge of the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic properties of their chemical products, at all material times hereto, Defendants concealed said toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic hazards from Plaintiff, Natividad Sanchez, so that Plaintiff, Natividad Sanchez, would use Defendants' chemical products.

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1 143. Plaintiff, Natividad Sanchez, was unaware of the
2 toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and
3 mutagenic hazards of Defendants' chemicals and would not have acted
4 as she did had she known of said concealed hazards.

5 144. As a direct and proximate result of Defendants'
6 fraudulent concealment of the toxic, genotoxic, immunotoxic,
7 hematotoxic, leukemogenic and mutagenic hazards of their chemical
8 products, Plaintiff, Natividad Sanchez, was exposed to Defendants'
9 chemical products in the course of her employment with various
10 employers, and has suffered serious injuries and disease, including
11 Acute Myelogenous Leukemia and other related medical conditions.

12 145. Plaintiff, Natividad Sanchez, was exposed to each of
13 the foregoing toxic chemicals.

14 146. Each of the toxic chemical products to which
15 Plaintiff, Natividad Sanchez, was exposed, was manufactured and/or
16 supplied by the foregoing defendants, as set forth in the section
17 entitled "Product Identification" above.

18 147. As a result of Plaintiff Natividad Sanchez's exposure
19 to the foregoing toxic chemical products, toxins within said toxic,
20 genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic
21 chemicals entered Plaintiff, Natividad Sanchez's body.

22 148. Plaintiff, Natividad Sanchez, suffers from a specific
23 illness, to wit, Acute Myelogenous Leukemia, as well as other related
24 and consequential injuries.

25 149. Each of the foregoing toxic chemical products caused
26 Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia and other
27 injuries.

28 150. Each toxin that entered Plaintiff, Natividad

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Sanchez's body was a substantial factor in bringing about, prolonging, and aggravating Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia and other injuries.

151. As a direct and proximate result of Defendants' fraudulent concealment of the toxic hazards of their chemicals, Plaintiff, Natividad Sanchez, suffers from Acute Myelogenous Leukemia and other related and consequential medical conditions.

152. As a direct and proximate result of Defendants' fraudulent concealment of the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic hazards of their chemicals, Plaintiffs have been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but which is well in excess of the jurisdictional minimum of the Court, and Plaintiff, Natividad Sanchez, has been unable to attend to her usual employment and activities.

153. As a further direct and proximate result of Defendants' fraudulent concealment of the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic hazards of their chemical products, Plaintiff, Natividad Sanchez, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

154. As a further direct and proximate result of Defendants' fraudulent concealment of the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic hazards of their chemical products, Plaintiff, Natividad Sanchez, has suffered and will continue to suffer general damages to be established according to proof at trial.

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155. In exposing Plaintiff to said toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals, Defendants failed to warn Plaintiff of known dangers, consciously disregarded Plaintiff's safety despite knowledge of the probable dangerous consequences of their chemicals, and willfully and deliberately failed to avoid said dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants concealed known toxic hazards of their chemicals from Plaintiff, specifically by failing to warn Plaintiff of adverse toxic effects of their chemicals, and such hazards were known by and such concealment was ratified by the corporate officers and managers of each of the defendants. Defendants consciously decided to market their chemicals with knowledge of their harmful effects and without remedying the toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic effects of their chemicals, and such marketing despite knowledge of the foregoing toxic hazards of Defendants' products was ratified by the corporate officers and managers of each of the defendants. Defendants also misrepresented the nature of their chemical products, by withholding information from Plaintiff regarding toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals released from their products during their anticipated or reasonably foreseeable uses, and such misrepresentation and withholding of information was ratified by the corporate officers and managers of each of the defendants.

156. Defendants' conduct in exposing Plaintiff to said

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toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and
mutagenic chemicals without adequate warnings of their toxic,
genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic
hazards and without adequate instructions for safe handling and use
was despicable, malicious, oppressive, and perpetrated in conscious
disregard of the rights and safety of Plaintiff, entitling Plaintiff
to punitive and exemplary damages.

SEVENTH CAUSE OF ACTION

FOR BREACH OF IMPLIED WARRANTIES

(By Plaintiff, Natividad Sanchez,

Against All Named Defendants and Does 1-200)

157. Plaintiffs refer to paragraphs 1 through 156 and, by
this reference, incorporate said paragraphs herein as though set
forth in full.

158. At all times mentioned herein, Defendants were the
importers, producers, and distributors of chemical products which
were purchased by Plaintiff's employers and delivered to or used at
various employers' facilities located at various locations throughout
California, including Los Angeles, where Plaintiff, Natividad
Sanchez, was exposed to them.

159. Defendants' chemical products to which Plaintiff was
exposed are toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic
and mutagenic.

160. By placing their chemical products in the stream of
commerce, Defendants impliedly warranted that their chemical products
were reasonably fit for their intended uses, that their chemical

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products were of merchantable quality, that they were not defective, that they would function as safely as ordinary users would expect when used in an intended or reasonably foreseeable manner, and that they would not cause serious disease, harm, or death.

161. Defendants, and each of them, breached said implied warranties, because their toxic chemical products were not reasonably fit for their intended uses, were not of merchantable quality, were defective, and failed to function as safely as an ordinary user would expect when used in an intended or reasonably foreseeable manner, and caused serious injuries to Plaintiff, Natividad Sanchez, to wit, Acute Myelogenous Leukemia and the other injuries described herein.

162. Plaintiff, Natividad Sanchez, was exposed to each of the foregoing toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals.

163. Each of the toxic chemical products to which Plaintiff, Natividad Sanchez, was exposed, was manufactured and/or supplied by the foregoing defendants, as set forth in the section entitled "Product Identification" above.

164. As a result of Plaintiff Natividad Sanchez's exposure to the foregoing toxic chemical products, toxins within said toxic, genotoxic, immunotoxic, hematotoxic, leukemogenic and mutagenic chemicals entered Plaintiff, Natividad Sanchez's body.

165. Plaintiff, Natividad Sanchez, suffers from a specific illness, to wit, Acute Myelogenous Leukemia, as well as other related and consequential injuries.

166. Each of the foregoing toxic chemical products caused Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia and other injuries.

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167. Each toxin that entered Plaintiff, Natividad Sanchez's body was a substantial factor in bringing about, prolonging, and aggravating Plaintiff, Natividad Sanchez's Acute Myelogenous Leukemia and other injuries.

168. As a direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Natividad Sanchez, has suffered serious injuries and disease, including Acute Myelogenous Leukemia and other related and consequential medical conditions.

169. As a direct and proximate result of Defendants' breaches of implied warranties, Plaintiffs have been required to expend money and incur obligations for medical and related expenses in an amount not yet determined but well in excess of the jurisdictional minimum of the Court, and Plaintiff, Natividad Sanchez, has been unable to attend to her usual employment and activities.

170. As a further direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Natividad Sanchez, has suffered lost income and will continue to suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established according to proof.

171. As a further direct and proximate result of Defendants' breaches of implied warranties, Plaintiff, Natividad Sanchez, has suffered and will continue to suffer general damages according to proof at trial.

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EIGHTH CAUSE OF ACTION

FOR LOSS OF CONSORTIUM

(By Plaintiff Francisco Sanchez,
Against All Named Defendants and Does 1-200)

172. Plaintiff refers to paragraphs 1 through 171 and, by this reference, incorporates said paragraphs herein in full.

173. For all material times hereto, Plaintiffs Natividad Sanchez and Francisco Sanchez have been married and living together as husband and wife.

174. As a direct and proximate result of Defendants' above-described conduct and Defendants' defective chemical products, Plaintiff Francisco Sanchez, has lost and been deprived of the services, love, companionship, comfort, affection, society, sexual relations, and solace of Plaintiff, Natividad Sanchez all to the special and general damages of Plaintiff Francisco Sanchez. Plaintiff anticipates further loss of consortium in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgement as follows:

1. For general damages in a sum in excess of the minimum jurisdictional amount of the court;
2. For medical expenses according to proof;
3. For loss of earnings according to proof;
4. For household services according to proof;
5. For pre- and post-judgment interest allowed by law;
6. For punitive damages according to proof;

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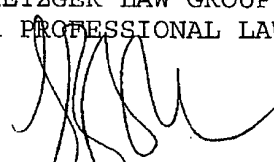
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1 7. For Plaintiff's costs of suit incurred herein; and,
2 8. For such other and further relief as the Court deems
3 just and proper.
4

5 DATED: April 14, 2014

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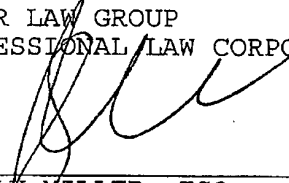

KIMBERLY MILLER, ESQ.
Attorneys for Plaintiff

11 DEMAND FOR JURY TRIAL

12 Pursuant to Cal. Code of Civil Procedure § 600 et seq. (and
13 Rule 38 of the Federal Rules of Civil Procedure should this case ever
14 be removed to federal court), Plaintiff hereby demand trial by jury
15 of all issues which may be tried to a jury.
16

17 DATED: April 14, 2014

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PRACTICE CONCENTRATED IN TOXIC
TORT & ENVIRONMENTAL LITIGATION
OCCUPATIONAL & ENVIRONMENTAL LUNG
DISEASE, CANCER, AND TOXIC INJURIES

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Attorneys for Plaintiffs,
NATIVIDAD SANCHEZ and FRANCISCO SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

NATIVIDAD SANCHEZ and FRANCISCO)	CASE NO. BC542612
SANCHEZ,)	Reassigned to the Honorable
Plaintiffs,)	Richard E. Rico, Dept. 17
v.)	PLAINTIFFS' STATEMENT OF
AGRO LOGISTIC SYSTEMS, INC. a)	DAMAGES
California corporation; AMTIDE,)	
LLC, a Delaware limited)	
liability company; AMVAC)	
CHEMICAL CORPORATION, a)	
California corporation; ARYSTA)	
LIFESCIENCE NORTH AMERICA LLC,)	
formerly doing business as)	
ARYSTA LIFESCIENCE NORTH AMERICA)	
CORPORATION individually, and as)	
successor by acquisition to)	
MICRO FLO COMPANY, a California)	
limited liability company; et)	
al.,)	
Defendants.)	

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1 Plaintiffs, NATIVIDAD SANCHEZ and FRANCISCO SANCHEZ, hereby
2 submit a Statement of Damages as follows:

3
4 1. General damages consisting of pain and suffering,
5 caused by the incident, and other injuries described in the complaint
6 on file herein, in the sum of \$5,000,000.

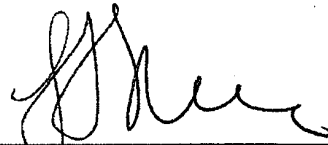
7 2. Special damages, consisting of medical expenses to
8 date, totaling approximately \$1,500,000; loss of earnings to date
9 totaling approximately \$175,000, estimated cost of future medical
10 care totaling approximately \$2,000,000, estimated loss of future
11 earning capacity totaling approximately \$500,000.

12 3. Loss of society and consortium by plaintiff's spouse,
13 totaling approximately \$1,000,000.

14 4. Punitive damages in the sum of \$3,000,000.

15
16 DATED: April 17, 2014

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17
18
19
20 KIMBERLY A. MILLER, ESQ.
Attorneys for Plaintiff
21 NATIVIDAD SANCHEZ and FRANCISCO SANCHEZ

EXHIBIT 8

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11 *Attorneys for Plaintiff*

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14
15 EMANUEL RICHARD GIGLIO,

16 Plaintiff

17 v.

18 MONSANTO COMPANY and JOHN
DOES 1-50.

19 Defendant.

Civil Action No.: '15CV2279 BTM NLS

COMPLAINT

JURY TRIAL DEMANDED

20
21 **COMPLAINT**

22
23 Plaintiff, Emanuel Richard Giglio ("Plaintiff"), by and through his undersigned attorneys,
24 hereby brings this Complaint for damages against Defendants Monsanto Company and John Does 1-
25 50, and alleges the following:

NATURE OF THE CASE

1
2 1. This is an action for damages suffered by Plaintiff as a direct and proximate result of
3 Defendants' negligent and wrongful conduct in connection with the design, development,
4 manufacture, testing, packaging, promoting, marketing, advertising, distribution, labeling, and/or sale
5 of the herbicide Roundup[®], containing the active ingredient glyphosate.

6 2. Plaintiff maintains that Roundup[®] and/or glyphosate is defective, dangerous to human
7 health, unfit and unsuitable to be marketed and sold in commerce, and lacked proper warnings and
8 directions as to the dangers associated with its use.

9 3. Plaintiff's injuries, like those striking thousands of similarly situated victims across the
10 country, were avoidable.

JURISDICTION AND VENUE

11
12 4. This Court has jurisdiction over Defendants and this action pursuant to 28 U.S.C. §
13 1332 because there is complete diversity of citizenship between Plaintiff and Defendants. Defendants
14 are all either incorporated and/or have their principal place of business outside of the state in which the
15 Plaintiff resides.

16 5. The amount in controversy between Plaintiff and Defendants exceeds \$75,000,
17 exclusive of interest and cost.

18 6. The Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

19 7. Venue is proper within this district pursuant to 28 U.S.C. § 1391 in that Defendants
20 conduct business here and are subject to personal jurisdiction in this district. Furthermore, Defendants
21 sell, market, and/or distribute Roundup[®] within the District of California. Also, a substantial part of
22 the acts and/or omissions giving rise to these claims occurred within this district.

PARTIES

23
24 8. Plaintiff, Emanuel Richard Giglio, is a natural person and at all relevant times a resident
25 and citizen of San Diego County, California. Plaintiff brings this action for personal injuries sustained
26 by exposure to Roundup[®] ("Roundup") containing the active ingredient glyphosate and the surfactant
27 POEA. As a direct and proximate result of being exposed to Roundup, Plaintiff developed non-
28

1 Hodgkin's Lymphoma.

2 9. "Roundup" refers to all formulations of Defendants' roundup products, including, but
3 not limited to, Roundup Concentrate Poison Ivy and Tough Brush Killer 1, Roundup Custom
4 Herbicide, Roundup D-Pak herbicide, Roundup Dry Concentrate, Roundup Export Herbicide, Roundup
5 Fence & Hard Edger 1, Roundup Garden Foam Weed & Grass Killer, Roundup Grass and Weed Killer,
6 Roundup Herbicide, Roundup Original 2k herbicide, Roundup Original II Herbicide, Roundup Pro
7 Concentrate, Roundup Prodry Herbicide, Roundup Promax, Roundup Quik Stik Grass and Weed
8 Killer, Roundup Quikpro Herbicide, Roundup Rainfast Concentrate Weed & Grass Killer, Roundup
9 Rainfast Super Concentrate Weed & Grass Killer, Roundup Ready-to-Use Extended Control Weed &
10 Grass Killer 1 Plus Weed Preventer, Roundup Ready-to-Use Weed & Grass Killer, Roundup Ready-to-
11 Use Weed and Grass Killer 2, Roundup Ultra Dry, Roundup Ultra Herbicide, Roundup Ultramax,
12 Roundup VM Herbicide, Roundup Weed & Grass Killer Concentrate, Roundup Weed & Grass Killer
13 Concentrate Plus, Roundup Weed & Grass killer Ready-to-Use Plus, Roundup Weed & Grass Killer
14 Super Concentrate, Roundup Weed & Grass Killer1 Ready-to-Use, Roundup WSD Water Soluble Dry
15 Herbicide Deploy Dry Herbicide, or any other formulation of containing the active ingredient
16 glyphosate.

17 10. Defendant MONSANTO COMPANY is a Delaware corporation, Calif. Secretary of
18 State Entity No. C2362863, in "active" status, with a principle place of business in St. Louis,
19 Missouri.

20 11. Upon best information and belief, Defendants JOHN DOES 1-50 are subsidiaries,
21 partners, or other entities that were involved in the design, development, manufacture, testing,
22 packaging, promoting, marketing, advertising, distribution, labeling, and/or sale of the herbicide
23 Roundup, containing the active ingredient glyphosate. The identities of JOHN DOES 1-50 are
24 unknown to Plaintiff at this time. Plaintiff will move the Court to specifically name JOHN DOES 1-
25 50 as their identities becomes known to Plaintiff through discovery.

26 12. Defendant MONSANTO COMPANY and JOHN DOES 1-50 are collectively referred
27 to as "Monsanto Defendants" or "Defendants."

28 13. Defendants advertise and sell goods, specifically Roundup, in San Diego County,

1 California.

2 14. Defendants transacted and conducted business within the State of California that relates
3 to the allegations in this Complaint.

4 15. Defendants derived substantial revenue from goods and products used in the State of
5 California.

6 16. Defendants expected or should have expected their acts to have consequences within
7 the State of California, and derived substantial revenue from interstate commerce.

8 17. Defendants engaged in the business of designing, developing, manufacturing, testing,
9 packaging, marketing, distributing, labeling, and/or selling Roundup.

10 18. Defendants are authorized to do business in California and derive substantial income
11 from doing business in this state.

12 19. Upon information and belief, Defendants purposefully availed themselves of the
13 privilege of conducting activities with the State of California, thus invoking the benefits and
14 protections of its laws.

15 20. Upon information and belief, Defendants did act together to design, sell, advertise,
16 manufacture and/or distribute Roundup, with full knowledge of its dangerous and defective nature.

17 **FACTUAL ALLEGATIONS**

18 21. At all relevant times, Defendants were in the business of, and did, design, research,
19 manufacture, test, advertise, promote, market, sell, distribute, and/or have acquired and are responsible
20 for Defendants who have designed, researched, manufactured, tested, advertised, promoted, marketed,
21 sold, and distributed the commercial herbicide Roundup.

22 22. Monsanto is a multinational agricultural biotechnology corporation based in St. Louis,
23 Missouri. It is the world's leading producer of glyphosate.

24 23. Defendants discovered the herbicidal properties of glyphosate during the 1970's and
25 subsequently began to design, research, manufacture, sell and distribute glyphosate based "Roundup"
26 as a broad spectrum herbicide.

27 24. Glyphosate is the active ingredient in Roundup.

1 25. Glyphosate is a broad-spectrum herbicide used to kill weeds and grasses known to
2 compete with commercial crops grown around the globe.

3 26. Glyphosate is a “non-selective” herbicide, meaning it kills indiscriminately based only
4 on whether a given organism produces a specific enzyme, 5-enolpyruvylshikimic acid-3-phosphate
5 synthase, known as EPSP synthase.

6 27. Glyphosate inhibits the enzyme 5-enolpyruvylshikimic acid-3-phosphate synthase that
7 interferes with the shikimic pathway in plants, resulting in the accumulation of shikimic acid in plant
8 tissue and ultimately plant death.

9 28. Sprayed as a liquid, plants absorb glyphosate directly through their leaves, stems, and
10 roots, and detectable quantities accumulate in the plant tissues.

11 29. Each year, approximately 250 million pounds of glyphosate are sprayed on crops,
12 commercial nurseries, suburban lawns, parks, and golf courses. This increase in use has been driven
13 largely by the proliferation of genetically engineered crops, crops specifically tailored to resist the
14 activity of glyphosate.

15 30. Defendants are intimately involved in the development, design, manufacture,
16 marketing, sale, and/or distribution of genetically modified (“GMO”) crops, many of which are
17 marketed as being resistant to Roundup *i.e.*, “Roundup Ready®.” As of 2009, Defendants were the
18 world’s leading producer of seeds designed to be Roundup Ready®. In 2010, an estimated 70% of corn
19 and cotton, and 90% of soybean fields in the United States contained Roundup Ready® seeds.

20 31. The original Roundup, containing the active ingredient glyphosate, was introduced in
21 1974. Today, glyphosate products are among the world’s most widely used herbicides. Monsanto’s
22 glyphosate products are registered in more than 130 countries and are approved for weed control in
23 more than 100 crops. No other herbicide active ingredient compares in terms of number of approved
24 uses.¹

25 32. For nearly 40 years, farmers across the globe have used Roundup, unaware of its
26 carcinogenic properties.

28 ¹ *Background*, History of Monsanto’s Glyphosate Herbicides, June 2005.

REGISTRATION OF HERBICIDES UNDER FEDERAL LAW

33. The manufacture, formulation and distribution of herbicides, such as Roundup, are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7. U.S.C. § 136 *et seq.* FIFRA requires that all pesticides be registered with the Environmental Protection Agency (“EPA) prior to their distribution, sale, or use, except as described by FIFRA 7 U.S.C. 136a(a).

34. The EPA requires as part of the registration process, among other requirements, a variety of tests to evaluate the potential for exposure to pesticides, toxicity to people and other potential non-target organisms, and other adverse effects on the environment. Registration by the EPA, however, is not an assurance or finding of safety. The determination the EPA makes in registering or re-registering a product is not that the product is “safe,” but rather that use of the product in accordance with its label directions “will not generally cause unreasonable adverse effects on the environment.” 7 U.S.C. § 136(a)(c)(5)(D).

35. FIFRA defines “unreasonable adverse effects on the environment” to mean “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.” 7 U.S.C. § 136(bb). FIFRA thus requires the EPA to make a risk/benefit analysis in determining whether a registration should be granted or allowed to continue to be sold in commerce.

36. The EPA and the State of California registered Roundup for distribution, sale, and manufacture in the United States and the State of California.

37. FIFRA generally requires that the registrant, Monsanto, conduct health and safety testing of pesticide products. The government is not required, nor is it able, to perform the product tests that are required of the manufacturer.

38. The evaluation of each pesticide product distributed, sold, or manufactured is completed at the time the product is initially registered. The data necessary for registration of a pesticide has changed over time. The EPA is now in the process of re-evaluating all pesticide products through a Congressionally-mandated process called “re-registration.” 7 U.S.C. § 136a-1. In order to reevaluate these pesticides, the EPA demands the completion of additional tests and the submission of data for the EPA’s review and evaluation.

39. In the case of glyphosate and Roundup, the EPA had planned on releasing its preliminary risk assessment – in relation to the registration process – no later than July 2015. The EPA completed its review of glyphosate in early 2015, but delayed releasing the assessment pending further review in light of the World Health Organization’s findings.

MONSANTO’S FALSE REPRESENTATIONS REGARDING THE SAFETY OF ROUNDUP®

40. In 1996, the New York Attorney General (“NYAG”) filed a lawsuit against Monsanto based on its false and misleading advertising of Roundup products. Specifically, the lawsuit challenged Monsanto’s general representations that its spray-on glyphosate-based herbicides, including Roundup, were “safer **than table salt**” and “practically **non-toxic**” to mammals, birds, and fish. Among the representations the NYAG found deceptive and misleading about the human and environmental safety of Roundup are the following:

a) Remember that environmentally friendly Roundup herbicide is biodegradable. It won't build up in the soil so you can use Roundup with confidence along customers' driveways, sidewalks and fences ...

b) And remember that Roundup is biodegradable and won't build up in the soil. That will give you the environmental confidence you need to use Roundup everywhere you've got a weed, brush, edging or trimming problem.

b) Roundup biodegrades into naturally occurring elements.

d) Remember that versatile Roundup herbicide stays where you put it. That means there's no washing or leaching to harm customers' shrubs or other desirable vegetation.

e) This non-residual herbicide will not wash or leach in the soil. It ... stays where you apply it.

f) You can apply Accord with “ confidence because it will stay where you put it” it bonds tightly to soil particles, preventing leaching. Then, soon after application, soil microorganisms biodegrade Accord into natural products.

g) Glyphosate is less toxic to rats than table salt following acute oral

1 ingestion.

2 h) Glyphosate's safety margin is much greater than required. It has over a
3 1,000-fold safety margin in food and over a 700-fold safety margin for
workers who manufacture it or use it.

4 i) You can feel good about using herbicides by Monsanto. They carry
5 a toxicity category rating of 'practically non-toxic' as it pertains to
mammals, birds and fish.

6 j) "Roundup can be used where kids and pets will play and breaks down
7 into natural material." This ad depicts a person with his head in the ground
8 and a pet dog standing in an area which has been treated with Roundup.²

9 41. On November 19, 1996, Monsanto entered into an Assurance of Discontinuance with
10 NYAG, in which Monsanto agreed, among other things, "to cease and desist from publishing or
11 broadcasting any advertisements [in New York] that represent, directly or by implication" that:

12 a) its glyphosate-containing pesticide products or any component
13 thereof are safe, non-toxic, harmless or free from risk.

14 ***

15 b) its glyphosate-containing pesticide products or any component
16 thereof manufactured, formulated, distributed or sold by
Monsanto are biodegradable

17 ***

18 c) its glyphosate-containing pesticide products or any component
19 thereof stay where they are applied under all circumstances and
20 will not move through the environment by any means.

21 ***

22 d) its glyphosate-containing pesticide products or any component
23 thereof are "good" for the environment or are "known for their
environmental characteristics."

24 ***

25 e) glyphosate-containing pesticide products or any component
26 thereof are safer or less toxic than common consumer products
27 other than herbicides;

28 ² Attorney General of the State of New York, In the Matter of Monsanto Company, Assurance of Discontinuance Pursuant
to Executive Law § 63(15) (Nov. 1996).

f) its glyphosate-containing products or any component thereof might be classified as "practically non-toxic."

42. Monsanto did not alter its advertising in the same manner in any state other than New York, and on information and belief still has not done so today.

43. In 2009, France's highest court ruled that Monsanto had not told the truth about the safety of Roundup. The French court affirmed an earlier judgment that Monsanto had falsely advertised its herbicide Roundup as "biodegradable" and that it "left the soil clean."³

EVIDENCE OF CARCINOGENICITY IN ROUNDUP

44. As early as the 1980's Monsanto was aware of glyphosate's carcinogenic properties.

45. On March 4, 1985, a group of the Environmental Protection Agency's ("EPA") Toxicology Branch published a memorandum classifying glyphosate as a Category C oncogene.⁴ Category C oncogenes are possible human carcinogens with limited evidence of carcinogenicity.

46. In 1986, the EPA issued a Registration Standard for glyphosate (NTIS PB87-103214). The Registration standard required additional phytotoxicity, environmental fate, toxicology, product chemistry, and residue chemistry studies. All of the data required was submitted and reviewed and/or waived.⁵

47. In October 1991 the EPA published a Memorandum entitled "Second Peer Review of Glyphosate." The memorandum changed glyphosate's classification to Group E (evidence of non-carcinogenicity for humans). Two peer review committee members did not concur with the conclusions of the committee and one member refused to sign.⁶

48. In addition to the toxicity of the active molecule, many studies support the hypothesis that glyphosate formulations found in Defendants' Roundup products are more dangerous and toxic than glyphosate alone.⁷ As early as 1991 evidence existed demonstrating that glyphosate formulations

³ *Monsanto Guilty in 'False Ad' Row*, BBC, Oct. 15, 2009, available at <http://news.bbc.co.uk/2/hi/europe/8308903.stm>.

⁴ Consensus Review of Glyphosate, Casewell No. 661A. March 4, 1985. United States Environmental Protection Agency.

⁵ <http://www.epa.gov/oppsrrd1/reregistration/REDs/factsheets/0178fact.pdf>

⁶ Second Peer Review of Glyphosate, CAS No. 1071-83-6. October 30, 1991. United States Environmental Protection Agency.

⁷ Martinez et al. 2007; Benachour 2009; Gasnier et al. 2010; Peixoto 2005; Marc 2004

1 were significantly more toxic than glyphosate alone.⁸

2 49. In 2002, Julie Marc published a study entitled “Pesticide Roundup Provokes Cell
3 Division Dysfunction at the Level of CDK1/Cyclin B Activation.”

4 50. The study found that Defendants’ Roundup caused delays in the cell cycles of sea
5 urchins, while the same concentrations of glyphosate alone proved ineffective and did not alter cell
6 cycles.

7 51. In 2004, Julie Marc published a study entitled “Glyphosate-based pesticides affect cell
8 cycle regulation.” The study demonstrated a molecular link between glyphosate-based products and
9 cell cycle dysregulation.

10 52. The study noted that “cell-cycle dysregulation is a hallmark of tumor cells and human
11 cancer. Failure in the cell-cycle checkpoints leads to genomic instability and subsequent development
12 of cancers from the initial affected cell.” Further, “[s]ince cell cycle disorders such as cancer result
13 from dysfunction of unique cell, it was of interest to evaluate the threshold dose of glyphosate
14 affecting cells.”⁹

15 53. In 2005, Francisco Peixoto published a study showing that Roundup’s effects on rat
16 liver mitochondria are much more toxic and harmful than the same concentrations of glyphosate alone.

17 54. The Peixoto study suggested that the harmful effects of Roundup on mitochondrial
18 bioenergetics could not be exclusively attributed to glyphosate and could be the result of other
19 chemicals, namely the surfactant POEA, or alternatively due to the possible synergy between
20 glyphosate and Roundup formulation products.

21 55. In 2009, Nora Benachour and Gilles-Eric Serallini published a study examining the
22 effects of Roundup and glyphosate on human umbilical, embryonic, and placental cells.

23 56. The study used dilution levels of Roundup and glyphosate far below agricultural
24 recommendations, corresponding with low levels of residues in food. The study concluded that
25 supposed “inert” ingredients, and possibly POEA, change human cell permeability and amplify
26 toxicity of glyphosate alone. The study further suggested that determinations of glyphosate toxicity

27 _____
28 ⁸ Martinez et al 1991

⁹ (Molinari, 2000; Stewart et al., 2003)

1 should take into account the presence of adjuvants, or those chemicals used in the formulation of the
2 complete pesticide. The study confirmed that the adjuvants in roundup are not inert and that Roundup
3 is always more toxic than its active ingredient glyphosate.

4 57. The results of these studies were confirmed in recently published peer-reviewed studies
5 and were at all times available and/or known to Defendants.

6 58. Defendants knew or should have known that Roundup is more toxic than glyphosate
7 alone and that safety studies on Roundup, Roundup's adjuvants and "inert" ingredients, and/or the
8 surfactant POEA were necessary to protect Plaintiff from Roundup.

9 59. Defendants knew or should have known that tests limited to Roundup's active
10 ingredient glyphosate were insufficient to prove the safety of Roundup.

11 60. Defendants failed to appropriately and adequately test Roundup, Roundup's adjuvants
12 and "inert" ingredients, and/or the surfactant POEA to protect Plaintiff from Roundup.

13 61. Rather than performing appropriate tests, Defendants relied upon flawed industry-
14 supported studies designed to protect Defendants' economic interests rather than Plaintiff and the
15 consuming public.

16 62. Despite their knowledge that Roundup was considerably more dangerous than
17 glyphosate alone, Defendants continued to promote Roundup as safe.

18 **IARC Classification of Glyphosate**

19 63. The International Agency for Research on Cancer ("IARC") is the specialized
20 intergovernmental cancer agency the World Health Organization ("WHO") of the United Nations
21 tasked with conducting and coordinating research into the causes of cancer.

22 64. An IARC Advisory Group to Recommend Priorities for IARC Monographs during
23 2015–2019 met in April 2014. Though nominations for the review were solicited, a substance must
24 meet two criteria to be eligible for review by the IARC Monographs: there must already be some
25 evidence of carcinogenicity of the substance, and there must be evidence that humans are exposed to
26 the substance.

27 65. IARC set glyphosate for review in 2015-2016. IARC uses five criteria for determining
28 priority in reviewing chemicals. The substance must have a potential for direct impact on public health;

1 scientific literature to support suspicion of carcinogenicity; evidence of significant human exposure;
2 high public interest and/or potential to bring clarity to a controversial area and/or reduce public anxiety
3 or concern; related agents similar to one given high priority by the above considerations. Data
4 reviewed is sourced preferably from publicly accessible, peer-reviewed data.

5 66. On March 24, 2015, after its cumulative review of human, animal, and DNA studies for
6 more than one (1) year, many of which have been in Defendants' possession since as early as 1985, the
7 IARC's working group published its conclusion that the glyphosate contained in Defendants' Roundup
8 herbicide, is a Class 2A "probable carcinogen" as demonstrated by the mechanistic evidence of
9 carcinogenicity in humans and sufficient evidence of carcinogenicity in animals.

10 67. The IARC's full Monograph was published on July 29, 2015 and established glyphosate
11 as a class 2A *probable* carcinogen to humans. According to the authors glyphosate demonstrated
12 sufficient mechanistic evidence (genotoxicity and oxidative stress) to warrant a 2A classification based
13 on evidence of carcinogenicity in humans and animals.

14 68. The IARC Working Group found an increased risk between exposure to glyphosate and
15 non-Hodgkin's lymphoma ("NHL") and several subtypes of NHL, and the increased risk continued
16 after adjustment for other pesticides.

17 69. The IARC also found that glyphosate caused DNA and chromosomal damage in human
18 cells.

19 **EARLIER EVIDENCE OF GLYPHOSATE'S DANGER**

20 70. Despite the new classification by the IARC, Defendants have had ample evidence of
21 glyphosate and Roundup's genotoxic properties for decades.

22 71. Genotoxicity refers to chemical agents that are capable of damaging the DNA within a
23 cell through genetic mutations, which is a process that is believed to lead to cancer.

24 72. In 1997, Chris Clements published "Genotoxicity of select herbicides in *Rana*
25 *catesbeiana* tadpoles using the alkaline single-cell gel DNA electrophoresis (comet) assay."

26 73. The study found that tadpoles exposed to Roundup showed significant DNA damage
27 when compared with unexposed control animals.

28 74. Both human and animal studies have shown that glyphosate and glyphosate-based

1 formulations such as Roundup can induce oxidative stress.

2 75. Oxidative stress and associated chronic inflammation are believed to be involved in
3 carcinogenesis.

4 76. The IARC Monograph notes that “[s]trong evidence exists that glyphosate, AMPA and
5 glyphosate-based formulations can induce oxidative stress.”

6 77. In 2006 César Paz-y-Miño published a study examining DNA damage in human
7 subjects exposed to glyphosate.

8 78. The study produced evidence of chromosomal damage in blood cells showing
9 significantly greater damage after exposure to glyphosate than before in the same individuals,
10 suggesting that the glyphosate formulation used during aerial spraying had a genotoxic effect on
11 exposed individuals.

12 79. The IARC Monograph reflects the volume of evidence of glyphosate pesticides’
13 genotoxicity noting “[t]he evidence for genotoxicity caused by glyphosate-based formulations is
14 strong.”

15 80. Despite knowledge to the contrary, Defendants maintain that there is no evidence that
16 Roundup is genotoxic, that regulatory authorities and independent experts are in agreement that
17 Roundup is not genotoxic, and that there is no evidence that Roundup is genotoxic.

18 81. In addition to glyphosate and Roundup’s genotoxic properties, Defendants have long
19 been aware of glyphosate’s carcinogenic properties.

20 82. Glyphosate and Roundup in particular have long been associated with carcinogenicity
21 and the development of numerous forms of cancer, including, but not limited to, non-Hodgkin’s
22 lymphoma, Hodgkin’s lymphoma, multiple myeloma, and soft tissue sarcoma.

23 83. Defendants have known of this association since the early to mid-1980s and numerous
24 human and animal studies have evidenced the carcinogenicity of glyphosate and/or Roundup.

25 84. In 1985 the EPA studied the effects of glyphosate in mice finding a dose related
26 response in male mice linked to renal tubal adenomas, a rare tumor. The study concluded the
27 glyphosate was oncogenic.

28 85. In 2003 Lennart Hardell and Mikael Eriksson published the results of two case

1 controlled studies on pesticides as a risk factor for NHL and hairy cell leukemia.

2 86. The study concluded that glyphosate had the most significant relationship to NHL
3 among all herbicides studies with an increased odds ratio of 3.11.

4 87. In 2003 AJ De Roos published a study examining the pooled data of mid-western
5 farmers, examining pesticides and herbicides as risk factors for NHL.

6 88. The study, which controlled for potential confounders, found a relationship between
7 increased NHL incidence and glyphosate.

8 89. In 2008 Mikael Eriksson published a study a population based case-control study of
9 exposure to various pesticides as a risk factor for NHL.

10 90. This strengthened previous associations between glyphosate and NHL.

11 91. In spite of this knowledge, Defendants continued to issue broad and sweeping
12 statements suggesting that Roundup was, and is, safer than ordinary household items such as table salt,
13 despite a lack of scientific support for the accuracy and validity of these statements and, in fact,
14 voluminous evidence to the contrary.

15 92. Upon information and belief, these statements and representations have been made with
16 the intent of inducing Plaintiff, the agricultural community, and the public at large to purchase, and
17 increase the use of, Defendants' roundup for Defendants' pecuniary gain, and in fact did induce
18 Plaintiff to use Roundup.

19 93. Defendants made these statements with complete disregard and reckless indifference to
20 the safety of Plaintiff and the general public.

21 94. Notwithstanding Defendants' representations, scientific evidence has established a
22 clear association between glyphosate and genotoxicity, inflammation, and an increased risk of many
23 cancers, including, but not limited to, NHL, Multiple Myeloma, and soft tissue sarcoma.

24 95. Defendants knew or should have known that glyphosate is associated with an increased
25 risk of developing cancer, including, but not limited to, NHL, Multiple Myeloma, and soft tissue
26 sarcomas.

27 96. Defendants failed to appropriately and adequately inform and warn Plaintiff of the
28 serious and dangerous risks associated with the use of and exposure to glyphosate and/or Roundup,

1 including, but not limited to, the risk of developing NHL, as well as other severe and personal injuries,
2 which are permanent and/or long-lasting in nature, cause significant physical pain and mental anguish,
3 diminished enjoyment of life, and the need for medical treatment, monitoring and/or medications.

4 97. Despite the IARC's classification of glyphosate as a class 2A probable carcinogen,
5 Defendants continue to maintain that glyphosate and/or Roundup is safe, non-carcinogenic, non-
6 genotoxic, and falsely warrant to users and the general public that independent experts and regulatory
7 agencies agree that there is no evidence of carcinogenicity or genotoxicity in glyphosate and Roundup.

8 98. Defendants have claimed and continue to claim that Roundup is safe, non-carcinogenic,
9 and non-genotoxic.

10 99. Monsanto claims on its website that "[r]egulatory authorities and independent experts
11 around the world have reviewed numerous long-term/carcinogenicity and genotoxicity studies and
12 agree that there is no evidence that glyphosate, the active ingredient in Roundup brand herbicides and
13 other glyphosate-based herbicides, causes cancer, even at very high doses, and that it is not
14 genotoxic".¹⁰

15 100. Ironically, the primary source for this statement is a 1986 report by the WHO, the same
16 organization that now considers glyphosate to be a probable carcinogen.

17 101. Glyphosate, and Defendants' Roundup products in particular, have long been
18 associated with serious side effects and many regulatory agencies around the globe have banned or are
19 currently banning the use of glyphosate herbicide products.

20 102. Defendants' statements proclaiming the safety of Roundup and disregarding its dangers
21 misled Plaintiff.

22 103. Despite Defendants' knowledge that Roundup was associated with an elevated risk of
23 developing cancer, Defendants' promotional campaigns focused on Roundup's purported "safety
24 profile."

25 104. Defendants' failure to adequately warn Plaintiff resulted in (1) Plaintiff using and being
26 exposed to glyphosate instead of using another acceptable and safe method of controlling unwanted
27

28 ¹⁰ Backgrounder - Glyphosate: No Evidence of Carcinogenicity. Updated November 2014. (downloaded October 9 2015)

1 weeds and pests; and (2) scientists and physicians failing to warn and instruct consumers about the risk
2 of cancer, including NHL, and other injuries associated with Roundup.

3 105. Defendants failed to seek modification of the labeling of Roundup to include relevant
4 information regarding the risks and dangers associated with roundup exposure.

5 106. The failure of Defendants to appropriately warn and inform the EPA has resulted in
6 inadequate warnings in safety information presented directly to users and consumers.

7 107. The failure of Defendants to appropriately warn and inform the EPA has resulted in the
8 absence of warning or caution statements that are adequate to protect health and the environment.

9 108. The failure of Defendants to appropriately warn and inform the EPA has resulted in the
10 directions for use that are not adequate to protect health and the environment.

11 109. By reason of the foregoing acts and omissions, Plaintiff seeks compensatory damages
12 as a result of Plaintiff's use of, and exposure to, Roundup which caused or was a substantial
13 contributing factor in causing Plaintiff to suffer from cancer, specifically NHL, and Plaintiff suffered
14 severe and personal injuries which are permanent and lasting in nature, physical pain and mental
15 anguish, including diminished enjoyment of life.

16 110. By reason of the foregoing, Plaintiff is severely and permanently injured.

17 111. By reason of the foregoing acts and omissions, Plaintiff has endured and, in some
18 categories continues to suffer, emotional and mental anguish, medical expenses, and other economic
19 and non-economic damages, as a result of the actions and inactions of the Defendants.

20 **PLAINTIFF'S EXPOSURE TO ROUNDUP**

21 112. Plaintiff owned and operated a turf installation business.

22 113. During Plaintiff's employment, Plaintiff sprayed Roundup on a regular basis. Plaintiff
23 followed all safety and precautionary warnings during the course of use.

24 114. Following a year of declining health, Plaintiff was diagnosed with stage three NHL in
25 2014.

26 115. As a result of his injury, Plaintiff has incurred significant economic and non-economic
27 damages.

EQUITABLE TOLLING OF APPLICABLE STATUTE OF LIMITATIONS

116. Plaintiff incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

117. The running of any statute of limitations has been tolled by reason of Defendants' fraudulent concealment. Defendants, through their affirmative misrepresentations and omissions, actively concealed from Plaintiff the true risks associated with Roundup and glyphosate.¹¹ Indeed, even as of October 2015, Defendants continue to represent to the public that "*Scientists are in agreement that there is no evidence glyphosate causes cancer.*" (emphasis added)¹²

118. As a result of Defendants' actions, Plaintiff was unaware, and could not reasonably know or have learned through reasonable diligence that Roundup and/or glyphosate contact, exposed Plaintiff to the risks alleged herein and that those risks were the direct and proximate result of Defendants' acts and omissions.

119. Furthermore, Defendants are estopped from relying on any statute of limitations because of their fraudulent concealment of the true character, quality and nature of Roundup. Defendants were under a duty to disclose the true character, quality, and nature of Roundup because this was non-public information over which Defendants had and continue to have exclusive control, and because Defendants knew that this information was not available to Plaintiff or to distributors of Roundup. In addition, Defendants are estopped from relying on any statute of limitations because of their intentional concealment of these facts.

120. Plaintiff had no knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the fraudulent acts of concealment of wrongdoing by Defendants, Plaintiff could not have reasonably discovered the wrongdoing at any time prior. Also, the economics of this fraud should be considered. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing, promoting and/or distributing a profitable herbicide, notwithstanding the known or reasonably known risks. Plaintiff and medical professionals could not

¹² Backgrounder - Glyphosate: No Evidence of Carcinogenicity. Updated November 2014. (downloaded October 9 2015)

1 have afforded and could not have possibly conducted studies to determine the nature, extent, and
 2 identity of related health risks, and were forced to rely on only the Defendants' representations.
 3 Accordingly, Defendants are precluded by the discovery rule and/or the doctrine of fraudulent
 4 concealment from relying upon any statute of limitations.

5
 6 **FIRST CAUSE OF ACTION**
(NEGLIGENCE)

7
 8 121. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint
 9 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
 10 set forth herein.

11 122. Defendants had a duty to exercise reasonable care in the designing, researching, testing,
 12 manufacturing, marketing, supplying, promoting, packaging, sale, and/or distribution of Roundup into
 13 the stream of commerce, including a duty to assure that the product would not cause users to suffer
 14 unreasonable, dangerous side effects.

15 123. Defendants failed to exercise ordinary care in the designing, researching, testing,
 16 manufacturing, marketing, supplying, promoting, packaging, sale, testing, quality assurance, quality
 17 control, and/or distribution of Roundup into interstate commerce in that Defendants knew or should
 18 have known that using Roundup created a high risk of unreasonable, dangerous side effects, including,
 19 but not limited to, the development of NHL, as well as other severe and personal injuries which are
 20 permanent and lasting in nature, physical pain and mental anguish, including diminished enjoyment of
 21 life, as well as need for lifelong medical treatment, monitoring, and/or medications.

22 124. The negligence by the Defendants, their agents, servants, and/or employees, included
 23 but was not limited to the following acts and/or omissions:

- 24 a. Manufacturing, producing, promoting, formulating, creating, and/or designing Roundup
without thoroughly testing it;
- 25 b. Failing to test Roundup and/or failing to adequately, sufficiently, and properly test
26 Roundup;
- 27 c. Not conducting sufficient testing programs to determine whether or not Roundup was
28 safe for use; in that Defendants herein knew or should have known that Roundup was
unsafe and unfit for use by reason of the dangers to its users;

- d. Not conducting sufficient testing programs and studies to determine Roundup's carcinogenic properties even after Defendants had knowledge that Roundup is, was, or could be carcinogenic;
 - e. Failing to conduct sufficient testing programs to determine the safety of "inert" ingredients and/or adjuvants contained within Roundup, and the propensity of these ingredients to render Roundup toxic, increase the toxicity of roundup, whether these ingredients are carcinogenic, magnify the carcinogenic properties of Roundup, and whether or not "inert" ingredients and/or adjuvants were safe for use;
 - f. Negligently failing to adequately and correctly warn the Plaintiff, the public, the medical and agricultural professions, and the EPA of the dangers of Roundup;
 - g. Failing to provide adequate cautions and warnings to protect the health of users, handlers, applicators, and persons who would reasonably and foreseeably come into contact with Roundup;
 - h. Negligently marketing, advertising, and recommending the use of Roundup without sufficient knowledge as to its dangerous propensities;
 - i. Negligently representing that Roundup was safe for use for its intended purpose, and/or that Roundup was safer than ordinary and common items such as table salt, when, in fact, it was unsafe;
 - j. Negligently representing that Roundup had equivalent safety and efficacy as other forms of herbicides;
 - k. Negligently designing Roundup in a manner, which was dangerous to its users;
 - l. Negligently manufacturing Roundup in a manner, which was dangerous to its users;
 - m. Negligently producing Roundup in a manner, which was dangerous to its users;
 - n. Negligently formulating Roundup in a manner, which was dangerous to its users;
 - o. Concealing information from the Plaintiff while knowing that Roundup was unsafe, dangerous, and/or non-conforming with EPA regulations; and
 - p. Improperly concealing and/or misrepresenting information from the Plaintiff, scientific and medical professionals, and/or the EPA, concerning the severity of risks and dangers of Roundup compared to other forms of herbicides.
 - q. Negligently selling Roundup with a false and misleading label.
125. Defendants under-reported, underestimated, and downplayed the serious dangers of Roundup.

126. Defendants negligently and deceptively compared the safety risks and/or dangers of Roundup with common everyday foods such as table salt, and other forms of herbicides.

127. Defendants were negligent and/or violated California law in the designing, researching, supplying, manufacturing, promoting, packaging, distributing, testing, advertising, warning, marketing, and selling of Roundup in that they:

- a. Failed to use ordinary care in designing and manufacturing Roundup so as to avoid the aforementioned risks to individuals when Roundup was used as an herbicide;
- b. Failed to accompany their product with proper and/or accurate warnings regarding all possible adverse side effects associated with the use of Roundup;
- c. Failed to accompany their product with proper warnings regarding all possible adverse side effects concerning the failure and/or malfunction of Roundup;
- d. Failed to accompany their product with accurate warnings regarding the risks of all possible adverse side effects concerning Roundup;
- e. Failed to warn Plaintiff of the severity and duration of such adverse effects, as the warnings given did not accurately reflect the symptoms, or severity of the side effects including, but not limited to, the development of NHL;
- f. Failed to conduct adequate testing, clinical testing and post-marketing surveillance to determine the safety of Roundup;
- g. Failed to conduct adequate testing, clinical testing, and post-marketing surveillance to determine the safety of Roundup's "inert" ingredients and/or adjuvants;
- h. Negligently misrepresented the evidence of Roundup's genotoxicity and carcinogenicity;
- i. Were otherwise careless and/or negligent.

128. Despite the fact that Defendants knew or should have known that Roundup caused, or could cause, unreasonably dangerous side effects, Defendants continued and continue to market, manufacture, distribute, and/or sell Roundup to consumers, including the Plaintiff.

129. Defendants knew or should have known that consumers such as the Plaintiff would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care, as set forth above.

130. Defendants' violations of law and/or negligence were the proximate cause of Plaintiff's injuries, harm and economic loss, which Plaintiff suffered and/or will continue to suffer.

1 131. As a result of the foregoing acts and omissions, the Plaintiff suffered from serious and
2 dangerous side effects including, but not limited to, NHL, as well as other severe and personal injuries
3 which are permanent and lasting in nature, physical pain and mental anguish, diminished enjoyment of
4 life, and financial expenses for hospitalization and medical care. Further, Plaintiff suffered life-
5 threatening NHL, and severe personal injuries, which are permanent and lasting in nature, physical
6 pain and mental anguish, including diminished enjoyment of life.

7 132. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
8 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
9 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a
10 jury trial on all issues contained herein.

11
12 **SECOND CAUSE OF ACTION**
13 **(STRICT PRODUCTS LIABILITY – DESIGN DEFECT)**

14 133. Plaintiff repeats, reiterates and, re-alleges each and every allegation of this Complaint
15 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
16 set forth herein.

17 134. At all times herein mentioned, the Defendants designed, researched, manufactured,
18 tested, advertised, promoted, sold, distributed, and/or have acquired the Defendants who have
19 designed, researched, tested, advertised, promoted, marketed, sold, and distributed Roundup as
20 hereinabove described that was used by the Plaintiff.

21 135. Defendants' Roundup was expected to and did reach the usual consumers, handlers, and
22 persons coming into contact with said product without substantial change in the condition in which it
23 was produced, manufactured, sold, distributed, and marketed by the Defendants.

24 136. At those times, Roundup was in an unsafe, defective, and inherently dangerous
25 condition, which was dangerous to users, and in particular, the Plaintiff herein.

26 137. The Roundup designed, researched, manufactured, tested, advertised, promoted,
27 marketed, sold, and distributed by Defendants was defective in design or formulation in that, when it
28

1 left the hands of the manufacturer and/or suppliers, the foreseeable risks exceeded the benefits
2 associated with the design or formulation of Roundup.

3 138. The Roundup designed, researched, manufactured, tested, advertised, promoted,
4 marketed, sold, and distributed by Defendants was defective in design and/or formulation, in that,
5 when it left the hands of the Defendants manufacturers and/or suppliers, it was unreasonably
6 dangerous, unreasonably dangerous in normal use, and it was more dangerous than an ordinary
7 consumer would expect.

8 139. At all times herein mentioned, Roundup was in a defective condition and unsafe, and
9 Defendants knew or had reason to know that said product was defective and unsafe, especially when
10 used in the form and manner as provided by the Defendants. In particular, Defendants' Roundup was
11 defective in the following ways:

- 12 a. When placed in the stream of commerce, Defendants' Roundup Products were
13 defective in design and formulation and, consequently, dangerous to an extent
14 beyond that which an ordinary consumer would anticipate.
- 15 b. When placed in the stream of commerce, Defendants' Roundup products were
16 unreasonably dangerous in that they were hazardous and posed a grave risk of
17 cancer and other serious illnesses when used in a reasonably anticipated manner.
- 18 c. When placed in the stream of commerce, Defendants' Roundup products contained
19 unreasonably dangerous design defects and were not reasonably safe when used in a
20 reasonably anticipated manner.
- 21 d. Defendants did not sufficiently test, investigate, or study its Roundup products.
- 22 e. Exposure to Roundup presents a risk of harmful side effects that outweigh any
23 potential utility stemming from the use of the herbicide.
- 24 f. Defendants new or should have known at the time of marketing its Roundup
25 products that exposure to Roundup and could result in cancer and other severe
26 illnesses and injuries.
- 27 g. Defendants did not conduct adequate post-marketing surveillance of its Roundup
28 products.

140. Defendants knew, or should have known that at all times herein mentioned its Roundup
was in a defective condition, and was and is inherently dangerous and unsafe.

1 141. Plaintiff was exposed to Defendants' Roundup in the course of his employment, as
2 described above, without knowledge of Roundup's dangerous characteristics.

3 142. At the time of the Plaintiff's use of and exposure to Roundup, Roundup was being used
4 for the purposes and in a manner normally intended, as a broad-spectrum herbicide.

5 143. Defendants with this knowledge voluntarily designed its Roundup with a dangerous
6 condition for use by the public, and in particular the Plaintiff.

7 144. Defendants had a duty to create a product that was not unreasonably dangerous for its
8 normal, intended use.

9 145. Defendants created a product that was and is unreasonably dangerous for its normal,
10 intended use.

11 146. Defendants marketed and promoted a product in such a manner so as to make it
12 inherently defective as the product downplayed its suspected, probable, and established health risks
13 inherent with its normal, intended use.

14 147. The Roundup designed, researched, manufactured, tested, advertised, promoted,
15 marketed, sold, and distributed by Defendants was manufactured defectively in that Roundup left the
16 hands of Defendants in a defective condition and was unreasonably dangerous to its intended users.

17 148. The Roundup designed, researched, manufactured, tested, advertised, promoted,
18 marketed, sold, and distributed by Defendants reached their intended users in the same defective and
19 unreasonably dangerous condition in which the Defendants' Roundup was manufactured.

20 149. Defendants designed, researched, manufactured, tested, advertised, promoted, marketed,
21 sold, and distributed a defective product, which created an unreasonable risk to the health of
22 consumers and to the Plaintiff in particular, and Defendants are therefore strictly liable for the injuries
23 sustained by the Plaintiff.

24 150. The Plaintiff could not, by the exercise of reasonable care, have discovered Roundup's
25 defects herein mentioned or perceived its danger.

26 151. By reason of the foregoing, the Defendants have become strictly liable to the Plaintiff
27 for the manufacturing, marketing, promoting, distribution, and selling of a defective product, Roundup.

1 152. Defendants' defective design, of Roundup amounts to willful, wanton, and/or reckless
2 conduct by Defendants.

3 153. Defects in Defendants' Roundup were the cause or a substantial factor in causing
4 Plaintiff's injuries.

5 154. As a result of the foregoing acts and omission, the Plaintiff developed NHL, and
6 suffered severe and personal injuries, which are permanent and lasting in nature, physical pain and
7 mental anguish, including diminished enjoyment of life, and financial expenses for hospitalization and
8 medical care.

9 155. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
10 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
11 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a
12 jury trial on all issues contained herein.

13
14 **THIRD CAUSE OF ACTION**
15 **(STRICT PRODUCTS LIABILITY – FAILURE TO WARN)**

16 156. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint
17 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
18 set forth herein.

19 157. Defendants have engaged in the business of selling, testing, distributing, supplying,
20 manufacturing, marketing, and/or promoting Roundup, and through that conduct have knowingly and
21 intentionally placed Roundup into the stream of commerce with full knowledge that it reaches
22 consumers such as Plaintiff who are exposed to it through ordinary and reasonably foreseeable uses.

23 158. Defendants did in fact sell, distribute, supply, manufacture, and/or promote Roundup to
24 Plaintiff. Additionally, Defendants expected the Roundup that they were selling, distributing,
25 supplying, manufacturing, and/or promoting to reach – and Roundup did in fact reach – consumers,
26 including Plaintiff, without any substantial change in the condition of the product from when it was
27 initially distributed by Defendants.
28

1 159. At the time of manufacture, Defendant could have provided the warnings or instructions
2 regarding the full and complete risks of Roundup and glyphosate-containing products because it knew
3 or should have known of the unreasonable risks of harm associated with the use of and/or exposure to
4 such products.

5 160. At all times herein mentioned, the aforesaid product was defective and unsafe in
6 manufacture such that it was unreasonably dangerous to the user, and was so at the time it was
7 distributed by Defendants and at the time Plaintiff was exposed to and/or ingested the product. The
8 defective condition of Roundup was due in part to the fact that it was not accompanied by proper
9 warnings regarding its carcinogenic qualities and possible side effects, including, but not limited to,
10 developing non-Hodgkin's lymphoma as a result of exposure and use.

11 161. Roundup did not contain a warning or caution statement, which was necessary and, if
12 complied with, was adequate to protect health those exposed in violation of 7 U.S.C. § 136j(a)(1)(E).

13 162. Defendants' failure to include a warning or caution statement which was necessary and,
14 if complied with, was adequate to protect the health of those exposed, violated 7 U.S.C. §
15 136j(a)(1)(E) as well as the laws of the State of California.

16 163. Defendants could have amended the label of Roundup to provide additional warnings.

17 164. This defect caused serious injury to Plaintiff, who used Roundup in its intended and
18 foreseeable manner.

19 165. At all times herein mentioned, Defendants had a duty to properly design, manufacture,
20 compound, test, inspect, package, label, distribute, market, examine, maintain supply, provide proper
21 warnings, and take such steps to assure that the product did not cause users to suffer from
22 unreasonable and dangerous side effects.

23 166. Defendants labeled, distributed, and promoted the aforesaid product that it was
24 dangerous and unsafe for the use and purpose for which it was intended.

25 167. Defendants failed to warn of the nature and scope of the side effects associated with
26 Roundup, namely its carcinogenic properties and its propensity to cause or serve as a substantial
27 contributing factor in the development of NHL.

1 168. Defendants were aware of the probable consequences of the aforesaid conduct.
2 Despite the fact that Defendants knew or should have known that Roundup caused serious injuries,
3 Defendants failed to exercise reasonable care to warn of the dangerous carcinogenic properties and
4 side effect of developing NHL from Roundup exposure, even though these side effects were known or
5 reasonably scientifically knowable at the time of distribution. Defendants willfully and deliberately
6 failed to avoid the consequences associated with their failure to warn, and in doing so, Defendants
7 acted with a conscious disregard for the safety of Plaintiff.

8 169. At the time of exposure, Plaintiff could not have reasonably discovered any defect in
9 Roundup prior through the exercise of reasonable care.

10 170. Defendants, as the manufacturers and/or distributors of the subject product, are held to
11 the level of knowledge of an expert in the field.

12 171. Plaintiff reasonably relied upon the skill, superior knowledge, and judgment of
13 Defendants.

14 172. Had Defendants properly disclosed the risks associated with Roundup, Plaintiff
15 would have avoided the risk of NHL by not using Roundup.

16 173. The information that Defendants did provide or communicate failed to contain adequate
17 warnings and precautions that would have enabled Plaintiff, and similarly situated individuals, to
18 utilize the product safely and with adequate protection. Instead, Defendants disseminated information
19 that was inaccurate, false, and misleading and which failed to communicate accurately or adequately
20 the comparative severity, duration, and extent of the risk of injuries associated with use of and/or
21 exposure to Roundup and glyphosate; continued to promote the efficacy of Roundup, even after it
22 knew or should have known of the unreasonable risks from use or exposure; and concealed,
23 downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information
24 or research about the risks and dangers of exposure to Roundup and glyphosate.

25 174. To this day, Defendants have failed to adequately warn of the true risks of Plaintiff's
26 injuries associated with the use of and exposure to Roundup.

175. As a result of their inadequate warnings, Defendants' Roundup products were defective and unreasonably dangerous when they left the possession and/or control of Defendant, were distributed by Defendant, and used by Plaintiff.

177. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a jury trial on all issues contained herein.

178. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

180. At all relevant times, Defendants intended that the Defendants' Roundup be used in the manner that Plaintiff used it, and Defendants expressly warranted that each Roundup product was safe and fit for use by consumers, that it was of merchantable quality, that its health and side effects were minimal, and that it was adequately tested and fit for its intended use.

182. Plaintiff purchased Roundup manufactured by Defendants.

1 184. Defendants expressly warranted that Roundup was safe and not dangerous to users.

2 185. Defendants expressly represented to Plaintiff, scientists, the agricultural community,
3 and/or the EPA that Roundup was safe and fit for use for the purposes intended, that it was of
4 merchantable quality, that it did not produce dangerous side effects in excess of those risks associated
5 with other forms of herbicides, that the side effects it did produce were accurately reflected in the
6 warnings, and that it was adequately tested and fit for its intended use.

7 186. Defendants breached various express warranties with respect to Roundup including the
8 following particulars:

9 a) Defendant Monsanto's website expressly states that "[r]egulatory authorities and
10 independent experts around the world have reviewed numerous long-
11 term/carcinogenicity and genotoxicity studies and agree that there is no evidence that
12 glyphosate, the active ingredient in Roundup brand herbicides and other glyphosate-
13 based herbicides, causes cancer, even at very high doses, and that it is not genotoxic"¹³

14 b) Defendants have expressly warranted that Roundup is "safer than table salt" and
15 "practically nontoxic."¹⁴

16 187. Roundup did not conform to these express representations because Roundup was not
17 safe and had, at all relevant times, an increased risk of serious side effects, including non-Hodgkin's
18 lymphoma, when used according to Defendants' instructions.

19 188. Defendants fraudulently concealed information from Plaintiff regarding the true
20 dangers and relative risks of Roundup.

21 189. The global scientific community is not, and was never, in agreement that Roundup is
22 non-carcinogenic.

23 190. Plaintiff did rely on the express warranties of the Defendants herein.

24 191. Plaintiff, consumers, and members of the agricultural community relied upon the
25 representation and warranties of the Defendants for use of Roundup in recommending, using,
26 purchasing, mixing, handling, applying, and/or dispensing Roundup.

27
28 ¹³ <http://www.monsanto.com/glyphosate/documents/no-evidence-of-carcinogenicity.pdf> October 8, 2015.

¹⁴ Reuters, Jun 14, 2015 [UPDATE 2-French minister asks shops to stop selling Monsanto Roundup weedkiller.](#)

1 192. The Defendants herein breached the aforesaid express warranties, as their product
2 Roundup was defective.

3 193. Defendants knew or should have known that, in fact, said representations and warranties
4 were false, misleading, and untrue in that Roundup was not safe and fit for the use intended, and, in
5 fact, produced serious injuries to the users that were not accurately identified and represented by
6 Defendants.

7 194. Defendants knew or should have known that, in fact, said warranties were false,
8 misleading, and untrue in that there is evidence that Roundup is toxic, genotoxic, and carcinogenic and
9 that scientists and/or regulatory authorities around the world are not in agreement that Roundup is not
10 carcinogenic or genotoxic and that it is safe.

11 195. As a result of the foregoing acts and omissions, the Plaintiff suffered from life-
12 threatening NHL and suffered severe and personal injuries, which are permanent and lasting in nature,
13 physical pain and mental anguish, including diminished enjoyment of life, and financial expenses for
14 hospitalization and medical care.

15 196. As a result of the foregoing acts and omissions, Plaintiff has suffered and incurred
16 damages, including medical expenses and other economic and non-economic damages.

17 197. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
18 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
19 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a
20 jury trial on all issues contained herein.

21
22
23
24
25 **FIFTH CAUSE OF ACTION**
26 **(BREACH OF IMPLIED WARRANTIES)**
27
28

1 198. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint
2 contained in each of the foregoing paragraphs inclusive, with the same force and effect all if more fully
3 set forth herein.

4 199. At all times herein mentioned, the Defendants manufactured, distributed, compounded,
5 recommended, merchandized, advertised, promoted, and sold Roundup and/or have recently acquired
6 the Defendants who have manufactured, compound portrayed, distributed, recommended,
7 merchandized, advertised, promoted, and sold Roundup, as a broad spectrum herbicide. These actions
8 were under the ultimate control and supervision of Defendants.

9 200. At the time Defendants marketed, sold, and distributed Roundup for use by Plaintiff,
10 Defendants knew of Roundup's intended use and impliedly warranted the product to be or
11 merchantable quality and safe and fit for this use.

12 201. The Defendants impliedly represented and warranted to Plaintiff and users of Roundup,
13 the agricultural community, and/or the EPA that Roundup was safe and of merchantable quality and fit
14 for the ordinary purpose for which it was to be used.

15 202. These representations and warranties were false, misleading, and inaccurate in that
16 Roundup was unsafe, unreasonably dangerous, not of merchantable quality, and defective.

17 203. Plaintiff and/or the EPA did rely on said implied warranty of merchantability of fitness
18 for particular use and purpose.

19 204. Plaintiff reasonably relied upon the skill and judgment of Defendants as to whether
20 Roundup was of merchantable quality and safe and fit for its intended use.

21 205. Roundup was injected into the stream of commerce by the Defendants in a defective,
22 unsafe, and inherently dangerous condition, and the products' materials were expected to and did reach
23 users, handlers, and persons coming into contact with said products without substantial change in the
24 condition in which they were sold.

25 206. The Defendants breached the aforesaid implied warranties, as their herbicide Roundup
26 was not fit for its intended purposes and uses.

27 207. As a result of the foregoing acts and omissions, Plaintiff suffered from NHL and
28 Plaintiff suffered severe and personal injuries which are permanent and lasting in nature, physical pain

1 and mental anguish, including diminished enjoyment of life, financial expenses for hospitalization and
 2 medical care, including medical expenses and other economic, and non-economic damages.

3 208. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
 4 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
 5 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a jury
 6 trial on all issues contained herein.

7
 8 **SIXTH CAUSE OF ACTION**
(NEGLIGENT MISREPRESENTATION)

9
 10 209. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint
 11 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
 12 set forth herein.

13 210. Defendants represented to Plaintiff, the EPA, and the public in general that said product,
 14 Roundup:

- 15 a) had been tested and found to be safe and effective for ordinary use as a broad spectrum
herbicide;
- 16 b) was safer than regular household items and contained no carcinogenic and/or genotoxic
17 properties;
- 18 c) that there is no evidence that glyphosate was carcinogenic and/or genotoxic;
- 19 d) that regulatory authorities and independent experts were, at all relevant times, in
20 agreement that there is and was no evidence that glyphosate is carcinogenic and/or genotoxic.

21 211. The representations made by Defendants were, in fact, false.

22 212. Defendants failed to exercise ordinary care in the representation of Roundup, while
 23 involved in its manufacture, sale, testing, quality assurance, quality control, and/or distribution of said
 24 product into interstate commerce, in that Defendants negligently misrepresented:

- 25 a) Roundup's high risk of unreasonable, dangerous side effects.
- 26 b) That credible evidence existed that Roundup was carcinogenic
- 27 c) That many regulatory authorities and/or independent experts did not agree that no
 28 evidence of glyphosate's carcinogenicity existed.

welfare of the general public and to the Plaintiff in an amount sufficient to punish Defendants and deter future similar conduct, to the extent allowed by applicable law;

5. Pre-judgment interest;

6. Post-judgment interest;

7. Awarding Plaintiff reasonable attorneys' fees;

8. Awarding Plaintiff the costs of these proceedings; and

9. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury as to all issues.

Dated: October 9, 2015

Respectfully submitted,



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EXHIBIT 9

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRISTINE SHEPPARD

Plaintiff,
vs.

MONSANTO COMPANY,

Defendants.

Case No.: 2:15-CV-8632

JURY TRIAL DEMANDED

COMPLAINT AND DEMAND FOR A JURY TRIAL

INTRODUCTION

1. In 1970, Defendant Monsanto Company, Inc. discovered the herbicidal properties of glyphosate and began marketing it in products in 1974 under the brand name Roundup®. Roundup® is a non-selective herbicide used to kill weeds that commonly compete with the growing of crops. By 2001, glyphosate had become the most-used active ingredient in American agriculture with 85–90 millions of pounds used annually. That number grew to 185 million pounds by 2007. As of 2013, glyphosate was the world's most widely used herbicide.
2. Monsanto is a multinational agricultural biotechnology corporation based in St. Louis, Missouri. It is the world's leading producer of glyphosate. As of 2009, Monsanto was the world's leading producer of seeds, accounting for 27% of the world seed market. The majority of these seeds are of the Roundup Ready® brand. The stated advantage of Roundup Ready® crops is that they substantially improve a farmer's ability to control weeds, since glyphosate can be sprayed in the fields during the growing season without harming their crops. In 2010, an estimated 70% of corn and cotton, and 90% of soybean fields in the United States were Roundup Ready®.
3. Monsanto's glyphosate products are registered in 130 countries and approved for use on over 100 different crops. They are ubiquitous in the environment. Numerous studies confirm that glyphosate is found in rivers, streams, and groundwater in agricultural areas where Roundup® is used. It has been found in food, in the urine of agricultural workers, and even in the urine of urban dwellers who are not in direct contact with glyphosate.
4. On March 20, 2015, the International Agency for Research on Cancer ("IARC"), an agency of the World Health Organization ("WHO"), issued an evaluation of several herbicides, including glyphosate. That evaluation was based, in part, on studies of exposures to glyphosate in several countries around the world, and it traces the health implications from exposure to glyphosate since 2001.
5. On July 29, 2015, IARC issued the formal monograph relating to glyphosate. In that monograph, the IARC Working Group provides a thorough review of the numerous studies and data relating to glyphosate exposure in humans.
6. The IARC Working Group classified glyphosate as a Group 2A herbicide, which means that it is probably carcinogenic to humans. The IARC Working Group concluded that the cancers most associated with glyphosate exposure are non-Hodgkin lymphoma and other haematopoietic cancers, including lymphocytic lymphoma/chronic lymphocytic leukemia, B-cell lymphoma, and multiple myeloma.
7. The IARC evaluation is significant. It confirms what has been believed for years: that glyphosate is toxic to humans.
8. Nevertheless, Monsanto, since it began selling Roundup®, has represented it as safe to humans and the environment. Indeed, Monsanto has repeatedly proclaimed and continues to proclaim to the world, and particularly to United States consumers, that glyphosate-based herbicides, including Roundup®, create no unreasonable risks to human health or to the environment.

JURISDICTION AND VENUE

9. Federal diversity jurisdiction in this Court is proper under 28 U.S.C. § 1332 because Plaintiff Christine Sheppard is a citizen of a different state from the Defendant Monsanto Company's states of citizenship, and the aggregate amount in controversy exceeds \$75,000, exclusive of interest and costs.
10. This Court has personal jurisdiction over Monsanto under C.C.P. § 410, because Monsanto knows or should have known that its Roundup® products are sold throughout the State of California.
11. In addition, Monsanto maintains sufficient contacts with the State of California such that this Court's exercise of personal jurisdiction over it does not offend traditional notions of fair play and substantial justice.
12. Venue is proper within this District under 28 U.S.C. § 1391 because Monsanto, as a corporate entity, is deemed to reside in any judicial district in which it is subject to personal jurisdiction.

THE PARTIES **Plaintiff**

13. Plaintiff Christine Sheppard resides in Oceanside, California. Formerly, she owned and worked a coffee farm in Hawaii. She used Roundup to kill weeds on her coffee farm from approximately 1995 to 2004.

Defendant

14. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri.

15. At all times relevant to this complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and the manufacturer of Roundup®.

FACTS

16. Glyphosate is a broad-spectrum, non-selective herbicide used in a wide variety of herbicidal products around the world.

17. Plants treated with glyphosate translocate the systemic herbicide to their roots, shoot regions and fruit, where it interferes with the plant’s ability to form aromatic amino acids necessary for protein synthesis. Treated plants generally die within two to three days. Because plants absorb glyphosate, it cannot be completely removed by washing or peeling produce or by milling, baking, or brewing grains.

18. For nearly 40 years, farms across the world have used Roundup® without knowing of the dangers its use poses. That is because when Monsanto first introduced Roundup®, it touted glyphosate as a technological breakthrough: it could kill almost every weed without causing harm either to people or to the environment. Of course, history has shown that not to be true. According to the WHO, the main chemical ingredient of Roundup®—glyphosate—is a probable cause of cancer. Those most at risk are farm workers and other individuals with workplace exposure to Roundup®, such as workers in garden centers, nurseries, and landscapers. Agricultural workers are, once again, victims of corporate greed. Monsanto assured the public that Roundup® was harmless. In order to prove this, Monsanto championed falsified data and attacked legitimate studies that revealed its dangers. Monsanto led a prolonged campaign of misinformation to convince government agencies, farmers and the general population that Roundup® was safe.

The Discovery of Glyphosate and Development of Roundup®

19. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto chemist John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-1970s under the brand name Roundup®. From the outset, Monsanto marketed Roundup® as a “safe” general-purpose herbicide for widespread commercial and consumer use. It still markets Roundup® as safe today.

Registration of Herbicides under Federal Law

20. The manufacture, formulation and distribution of herbicides, such as Roundup®, are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “Act”), 7 U.S.C. § 136 *et seq.* FIFRA requires that all pesticides be registered with the Environmental Protection Agency (“EPA” or “Agency”) prior to their distribution, sale, or use, except as described by the Act. 7 U.S.C. § 136a(a)

21. Because pesticides are toxic to plants, animals, and humans, at least to some degree, the EPA requires as part of the registration process, among other things, a variety of tests to evaluate the potential for exposure to pesticides, toxicity to people and other potential non-target organisms, and other adverse effects on the environment. Registration by the EPA, however, is not an assurance or finding of safety. The determination the Agency must make in registering or re-registering a product is not that the product is “safe,” but rather that use of the product in accordance with its label directions “will not generally cause unreasonable adverse effects on the environment.” 7 U.S.C. § 136a(c)(5)(D).

22. FIFRA defines “unreasonable adverse effects on the environment” to mean “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.” 7 U.S.C. § 136(bb). FIFRA thus requires EPA to make a risk/benefit analysis in determining whether a registration should be granted or allowed to continue to be sold in commerce.

23. The EPA and the State of California registered Roundup® for distribution, sale, and manufacture in the United States and the State of California.

24. FIFRA generally requires that the registrant, Monsanto in the case of Roundup®, conducts the health and safety testing of pesticide products. The EPA has protocols governing the conduct of tests required for registration and the laboratory practices that must be followed in conducting these tests. The data produced by the registrant must be submitted to the EPA for review and evaluation. The government is not required, nor is it able, however, to perform the product tests that are required of the manufacturer.

25. The evaluation of each pesticide product distributed, sold, or manufactured is completed at the time the product is initially registered. The data necessary for registration of a pesticide has changed over time. The EPA is now in the process of re-evaluating all pesticide products through a Congressionally-mandated process called “re-registration.” 7 U.S.C. § 136a-1. In order to reevaluate these pesticides, the EPA is demanding the completion of additional tests and the submission of data for the EPA’s review and evaluation.

26. In the case of glyphosate, and therefore Roundup®, the EPA had planned on releasing its preliminary risk assessment—in relation to the reregistration process—no later than July 2015. The EPA completed its review of glyphosate in early 2015, but it delayed releasing the risk assessment pending further review in light of the WHO’s health-related findings.

Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup

27. Based on early studies that glyphosate could cause cancer in laboratory animals, the EPA originally classified glyphosate as *possibly carcinogenic to humans* (Group C) in 1985. After pressure from Monsanto, including contrary studies it provided to the EPA, the EPA changed its classification to *evidence of non-carcinogenicity in humans* (Group E) in 1991. In so classifying glyphosate, however, the EPA made clear that the designation did not mean the chemical does not cause cancer: “It should be emphasized, however, that designation of an agent in Group E is based on the available evidence at the time of evaluation and should not be interpreted as a definitive conclusion that the agent will not be a carcinogen under any circumstances.”

28. On two occasions, the EPA found that the laboratories hired by Monsanto to test the toxicity of its Roundup® products for registration purposes committed fraud.

29. In the first instance, Monsanto, in seeking initial registration of Roundup® by EPA, hired Industrial Bio-Test Laboratories (“IBT”) to perform and evaluate pesticide toxicology studies relating to Roundup®. IBT performed about 30 tests on glyphosate and glyphosate-containing products, including nine of the 15 residue studies needed to register Roundup®.

30. In 1976, the United States Food and Drug Administration (“FDA”) performed an inspection of Industrial Bio-Test Industries (“IBT”) that revealed discrepancies between the raw data and the final report relating to the toxicological impacts of glyphosate. The EPA subsequently audited IBT; it too found the toxicology studies conducted for the Roundup® herbicide to be invalid. An EPA reviewer stated, after finding “routine falsification of data” at IBT, that it was “hard to believe the scientific integrity of the studies when they said they took specimens of the uterus from male rabbits.”

31. Three top executives of IBT were convicted of fraud in 1983.

32. In the second incident of data falsification, Monsanto hired Craven Laboratories in 1991 to perform pesticide and herbicide studies, including for Roundup®. In that same year, the owner of Craven Laboratories and three of its employees were indicted, and later convicted, of fraudulent laboratory practices in the testing of pesticides and herbicides.

33. Despite the falsity of the tests that underlie its registration, within a few years of its launch, Monsanto was marketing Roundup® in 115 countries.

The Importance of Roundup® to Monsanto’s Market Dominance Profits

34. The success of Roundup® was key to Monsanto’s continued reputation and dominance in the marketplace. Largely due to the success of Roundup® sales, Monsanto’s agriculture division was out-performing its chemicals division’s operating income, and that gap increased yearly. But with its patent for glyphosate expiring in the United States in the year 2000, Monsanto needed a strategy to maintain its Roundup® market dominance and to ward off impending competition.

35. In response, Monsanto began the development and sale of genetically engineered Roundup Ready® seeds in 1996. Since Roundup Ready® crops are resistant to glyphosate; farmers can spray Roundup® onto their fields during the growing season without harming the crop. This allowed Monsanto to expand its market for Roundup® even further; by 2000, Monsanto's biotechnology seeds were planted on more than 80 million acres worldwide and nearly 70% of American soybeans were planted from Roundup Ready® seeds. It also secured Monsanto's dominant share of the glyphosate/Roundup® market through a marketing strategy that coupled proprietary Roundup Ready® seeds with continued sales of its Roundup® herbicide.

36. Through a three-pronged strategy of increased production, decreased prices and by coupling with Roundup Ready® seeds, Roundup® became Monsanto's most profitable product. In 2000, Roundup® accounted for almost \$2.8 billion in sales, outselling other herbicides by a margin of five to one, and accounting for close to half of Monsanto's revenue. Today, glyphosate remains one of the world's largest herbicides by sales volume.

Monsanto has known for decades that it falsely advertises the safety of Roundup®

37. In 1996, the New York Attorney General ("NYAG") filed a lawsuit against Monsanto based on its false and misleading advertising of Roundup® products. Specifically, the lawsuit challenged Monsanto's general representations that its spray-on glyphosate-based herbicides, including Roundup®, were "**safer than table salt**" and "**practically non-toxic**" to mammals, birds, and fish. Among the representations the NYAG found deceptive and misleading about the human and environmental safety of Roundup® are the following:

- a) Remember that environmentally friendly Roundup herbicide is biodegradable. It won't build up in the soil so you can use Roundup with confidence along customers' driveways, sidewalks and fences ...
- b) And remember that Roundup is biodegradable and won't build up in the soil. That will give you the environmental confidence you need to use Roundup everywhere you've got a weed, brush, edging or trimming problem.
- c) Roundup biodegrades into naturally occurring elements. d) Remember that versatile Roundup herbicide stays where you put it. That means there's no washing or leaching to harm customers' shrubs or other desirable vegetation.
- e) This non-residual herbicide will not wash or leach in the soil. It ... stays where you apply it.
- f) You can apply Accord with "confidence because it will stay where you put it" it bonds tightly to soil particles, preventing leaching. Then, soon after application, soil microorganisms biodegrade Accord into natural products.
- g) Glyphosate is less toxic to rats than table salt following acute oral ingestion.
- h) Glyphosate's safety margin is much greater than required. It has over a 1,000-fold safety margin in food and over a 700-fold safety margin for workers who manufacture it or use it.
- i) You can feel good about using herbicides by Monsanto. They carry a toxicity category rating of 'practically non-toxic' as it pertains to mammals, birds and fish.
- j) "Roundup can be used where kids and pets will play and breaks down into natural material." This ad depicts a person with his head in the ground and a pet dog standing in an area which has been treated with Roundup.

38. On November 19, 1996, Monsanto entered into an Assurance of Discontinuance with NYAG, in which Monsanto agreed, among other things, "to

cease and desist from publishing or broadcasting any advertisements [in New York] that represent, directly or by implication" that:

- a) its glyphosate-containing pesticide products or any component thereof are safe, non-toxic, harmless or free from risk.

* * *

- b) its glyphosate-containing pesticide products or any component thereof manufactured, formulated, distributed or sold by Monsanto are biodegradable

* * *

- c) its glyphosate-containing pesticide products or any component thereof stay where they are applied under all circumstances and will not move through the environment by any means.

* * *

- d) its glyphosate-containing pesticide products or any component thereof are "good" for the environment or are "known for their environmental characteristics."

* * *

- e) glyphosate-containing pesticide products or any component thereof are safer or less toxic than common consumer products other than herbicides;
 - f) its glyphosate-containing products or any component thereof might be classified as "practically non-toxic."
39. Monsanto did not alter its advertising in the same manner in any state other than New York, and on information and belief still has not done so today.

40. In 2009, France's highest court ruled that Monsanto had not told the truth about the safety of Roundup®. The French court affirmed an earlier judgement that Monsanto had falsely advertised its herbicide Roundup® as "biodegradable" and that it "left the soil clean."

Classifications and Assessments of Glyphosate

41. The IARC process for the classification of glyphosate followed the stringent procedures for the evaluation of a chemical agent. Over time, the IARC Monograph program has reviewed 980 agents. Of those reviewed, it has determined 116 agents to be Group 1 (Known Human Carcinogens); 73 agents to be Group 2A (Probable Human Carcinogens); 287 agents to be Group 2B (Possible Human Carcinogens); 503 agents to be Group 3 (Not Classified); and one agent to be Probably Not Carcinogenic.

42. The established procedure for IARC Monograph evaluations is described in the IARC Programme's Preamble. Evaluations are performed by panels of international experts, selected on the basis of their expertise and the absence of actual or apparent conflicts of interest.

43. One year before the Monograph meeting, the meeting is announced and there is a call both for data and for experts. Eight months before the Monograph meeting, the Working Group membership is selected and the sections of the Monograph are developed by the Working Group members. One month prior to the Monograph meeting, the call for data is closed and the various draft sections are distributed among Working Group members for review and comment. Finally, at the Monograph meeting, the Working Group finalizes review of all literature, evaluates the evidence in each category, and completes the overall evaluation. Within two weeks after the Monograph meeting, the summary of the Working Group findings are published in *Lancet Oncology*, and within a year after the meeting, the final Monograph is finalized and published.

44. In assessing an agent, the IARC Working Group reviews the following information: (a) human, experimental, and mechanistic data; (b) all pertinent epidemiological studies and cancer bioassays; and (c) representative mechanistic data. The studies must be publicly available and have sufficient detail for meaningful review, and reviewers cannot be associated with the underlying study.

45. In March 2015, IARC reassessed glyphosate. The summary published in *The Lancet Oncology* reported that glyphosate is a Group 2A agent and probably carcinogenic in humans.

46. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph 112. For Volume 112, the volume that assessed glyphosate, a Working Group of 17 experts from 11 countries met at IARC from March 3–10, 2015, to assess the carcinogenicity of certain herbicides, including glyphosate. The March meeting culminated nearly a one-year review and preparation by the IARC Secretariat and the Working Group, including a comprehensive review of the latest available scientific evidence. According to published procedures, the Working Group considered "reports that have been published or accepted for publication in the openly available scientific literature" as well as "data from governmental reports that are publicly available."

47. The studies considered the following exposure groups: occupational exposure of farmers and tree nursery workers in the United States, forestry workers in Canada and Finland and municipal weed-control workers in the United Kingdom; and para-occupational exposure in farming families.

48. Glyphosate was identified as the second-most used household herbicide in the United States for weed control between 2001 and 2007 and the most heavily used herbicide in the world in 2012.

49. Exposure pathways are identified as air (especially during spraying), water, and food. Community exposure to glyphosate is widespread and found in soil, air, surface water, and groundwater, as well as in food.

50. The assessment of the IARC Working Group identified several case control studies of occupational exposure in the United States, Canada, and Sweden. These studies show a human health concern from agricultural and other work-related exposure to glyphosate.

51. The IARC Working Group found an increased risk between exposure to glyphosate and non-Hodgkin lymphoma (“NHL”) and several subtypes of NHL, and the increased risk persisted after adjustment for other pesticides.

52. The IARC Working Group also found that glyphosate caused DNA and chromosomal damage in human cells. One study in community residents reported increases in blood markers of chromosomal damage (micronuclei) after glyphosate formulations were sprayed.

53. In male CD-1 mice, glyphosate induced a positive trend in the incidence of a rare tumor, renal tubule carcinoma. A second study reported a positive trend for haemangiosarcoma in male mice. Glyphosate increased pancreatic islet-cell adenoma in male rats in two studies. A glyphosate formulation promoted skin tumors in an initiation-promotion study in mice.

54. The IARC Working Group also noted that glyphosate has been detected in the urine of agricultural workers, indicating absorption. Soil microbes degrade glyphosate to aminomethylphosphoric acid (AMPA). Blood AMPA detection after exposure suggests intestinal microbial metabolism in humans.

55. The IARC Working Group further found that glyphosate and glyphosate formulations induced DNA and chromosomal damage in mammals, and in human and animal cells in utero.

56. The IARC Working Group also noted genotoxic, hormonal, and enzymatic effects in mammals exposed to glyphosate. Essentially, glyphosate inhibits the biosynthesis of aromatic amino acids, which leads to several metabolic disturbances, including the inhibition of protein and secondary product biosynthesis and general metabolic disruption.

57. The IARC Working Group also reviewed an Agricultural Health Study, consisting of a prospective cohort of 57,311 licensed pesticide applicators in Iowa and North Carolina. While this study differed from others in that it was based on a self-administered questionnaire, the results support an association between glyphosate exposure and Multiple Myeloma, Hairy Cell Leukemia (HCL), and Chronic Lymphocytic Leukemia (CLL), in addition to several other cancers.

Other Earlier Findings About Glyphosate’s Dangers to Human Health

58. The EPA has a technical fact sheet, as part of its Drinking Water and Health, National Primary Drinking Water Regulations publication, relating to glyphosate. This technical fact sheet predates the IARC March 20, 2015, evaluation. The fact sheet describes the release patterns for glyphosate as follows:

Release Patterns

Glyphosate is released to the environment in its use as a herbicide for controlling woody and herbaceous weeds on forestry, right-of-way, cropped and non-cropped sites. These sites may be around water and in wetlands.

It may also be released to the environment during its manufacture, formulation, transport, storage, disposal and cleanup, and from spills. Since glyphosate is not a listed chemical in the Toxics Release Inventory, data on releases during its manufacture and handling are not available.

Occupational workers and home gardeners may be exposed to glyphosate by inhalation and dermal contact during spraying, mixing, and cleanup. They may also be exposed by touching soil and plants to which glyphosate was applied. Occupational exposure may also occur during glyphosate's manufacture, transport storage, and disposal.

59. In 1995, the Northwest Coalition for Alternatives to Pesticides reported that in California, the state with the most comprehensive program for reporting of pesticide-caused illness, glyphosate was the third most commonly-reported cause of pesticide illness among agricultural workers.

Recent Worldwide Bans on Roundup®/Glyphosate

60. Several countries around the world have instituted bans on the sale of Roundup® and other glyphosate-containing herbicides, both before and since IARC first announced its assessment for glyphosate in March 2015, and more countries undoubtedly will follow suit in light of the as the dangers of the use of Roundup® are more widely known. The Netherlands issued a ban on all glyphosate-based herbicides in April 2014, including Roundup®, which takes effect by the end of 2015. In issuing the ban, the Dutch Parliament member who introduced the successful legislation stated: “Agricultural pesticides in user-friendly packaging are sold in abundance to private persons. In garden centers, Roundup® is promoted as harmless, but unsuspecting customers have no idea what the risks of this product are. Especially children are sensitive to toxic substances and should therefore not be exposed to it.”

61. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian Justice Department suspend the use of glyphosate.

62. France banned the private sale of Roundup® and glyphosate following the IARC assessment for Glyphosate.

63. Bermuda banned both the private and commercial sale of glyphosates, including Roundup®. The Bermuda government explained its ban as follows: "Following a recent scientific study carried out by a leading cancer agency, the importation of weed spray 'Roundup' has been suspended."

64. The Sri Lankan government banned the private and commercial use of glyphosates, particularly out of concern that Glyphosate has been linked to fatal kidney disease in agricultural workers.

65. The government of Columbia announced its ban on using Roundup® and glyphosate to destroy illegal plantations of coca, the raw ingredient for cocaine, because of the WHO's finding that glyphosate is probably carcinogenic.

Plaintiff's Exposure to Roundup®

66. Plaintiff Christine Sheppard began applying Roundup to her commercial coffee crop in or around 1995. She applied the product routinely to her farm, on which she lived, until 2004.

67. Ms. Sheppard was diagnosed with non-Hodgkins lymphoma in 2003, following eight years of Roundup application.

68. As a result of this illness, she has had to cease farming coffee, has sold the farm, and has moved to California where she continues to undergo treatment and surveillance for her lymphoma.

**CLAIM ONE
STRICT LIABILITY (DESIGN DEFECT)**

69. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

70. Plaintiff brings this strict liability claim against Defendant for defective design.

71. At all times relevant to this litigation, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products, which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing Roundup® products into the stream of commerce. These actions were under the ultimate control and supervision of Defendant. At all times relevant to this litigation, Defendant designed, researched, developed, manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed, sold, and distributed the Roundup® products used by the Plaintiff, as described above.

72. At all times relevant to this litigation, Defendant's Roundup® products were manufactured, designed, and labeled in an unsafe, defective, and inherently dangerous manner that was dangerous for use by or exposure to the public, and, in particular, the Plaintiff.

73. At all times relevant to this litigation, Defendant's Roundup® products reached the intended consumers, handlers, and users or other persons coming into contact with these products in New York and throughout the United States, including Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendant.

74. Defendant's Roundup® products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendant were defective in design and formulation in that when they left the hands of the Defendant's manufacturers and/or suppliers, they were unreasonably dangerous and dangerous to an extent beyond that which an ordinary consumer would contemplate.

75. Defendant's Roundup® products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendant were defective in design and formulation in that

when they left the hands of Defendant's manufacturers and/or suppliers, the foreseeable risks exceeded the alleged benefits associated with their design and formulation.

76. At all times relevant to this action, Defendant knew or had reason to know that its Roundup® products were defective and were inherently dangerous and unsafe when used in the manner instructed and provided by Defendant.

77. Therefore, at all times relevant to this litigation, Defendant's Roundup® products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold and marketed by Defendant were defective in design and formulation, in one or more of the following ways: a. When placed in the stream of commerce, Defendant's Roundup® products were defective in design and formulation, and, consequently, dangerous to an extent beyond that which an ordinary consumer would contemplate.

b. When placed in the stream of commerce, Defendant's Roundup® products were unreasonably dangerous in that they were hazardous and posed a grave risk of cancer and other serious illnesses when used in a reasonably anticipated manner.

c. When placed in the stream of commerce, Defendant's Roundup® products contained unreasonably dangerous design defects and were not reasonably safe when used in a reasonably anticipated or intended manner.

d. Defendant did not sufficiently test, investigate, or study its Roundup® products and, specifically, the active ingredient glyphosate.

e. Exposure to Roundup® and glyphosate-containing products presents a risk of harmful side effects that outweigh any potential utility stemming from the use of the herbicide.

f. Defendant knew or should have known at the time of marketing its Roundup® products that exposure to Roundup® and specifically, its active ingredient glyphosate, could result in cancer and other severe illnesses and injuries.

g. Defendant did not conduct adequate post-marketing surveillance of its Roundup® products.

h. Defendant could have employed safer alternative designs and formulations.

78. Plaintiff was exposed to Defendant's Roundup® products in the course of her employment as a horticultural worker, as described above, without knowledge of their dangerous characteristics.

79. At all times relevant to this litigation, Plaintiff used and/or was exposed to the use of Defendant's Roundup® products in an intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

80. Plaintiff could not have reasonably discovered the defects and risks associated with Roundup® or glyphosate-containing products before or at the time of exposure.

81. The harm caused by Defendant's Roundup® products far outweighed their benefit, rendering Defendant's products dangerous to an extent beyond that which an ordinary consumer would contemplate. Defendant's Roundup® products were and are more dangerous than alternative products and Defendant could have designed its Roundup® products to make them less dangerous. Indeed, at the time that Defendant designed its Roundup® products, the state of the industry's scientific knowledge was such that a less risky design or formulation was attainable.

82. At the time Roundup® products left Defendant's control, there was a practical, technically feasible and safer alternative design that would have prevented the harm without substantially impairing the reasonably anticipated or intended function of Defendant's herbicides.

83. Defendant's defective design of its Roundup® products was willful, wanton, fraudulent, malicious, and conducted with reckless disregard for the health and safety of users of the Roundup® products, including the Plaintiff herein.

84. Therefore, as a result of the unreasonably dangerous condition of its Roundup® products, Defendant is strictly liable to Plaintiff.

85. The defects in Defendant's Roundup® products were substantial and contributing factors in causing Plaintiff's grave injuries, and, but for Defendant's misconduct and omissions, Plaintiff would not have sustained her injuries.

86. Defendant's conduct, as described above, was reckless. Defendant risked the lives of consumers and users of its products, including Plaintiff, with knowledge of the safety problems associated with Roundup® and glyphosate-containing products, and suppressed this knowledge from the general public. Defendant made conscious decisions not to redesign, warn or inform the unsuspecting public. Defendant's reckless conduct warrants an award of punitive damages.

87. As a direct and proximate result of Defendant placing its defective Roundup® products into the stream of commerce, Plaintiff has suffered and continues to suffer grave injuries, and has endured physical pain and discomfort, as well as economic hardship, including considerable financial expenses for medical care and treatment. Plaintiff will continue to incur these expenses in the future.

88. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

CLAIM TWO STRICT LIABILITY (FAILURE TO WARN)

89. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

90. Plaintiff brings this strict liability claim against Defendant for failure to warn.

91. At all times relevant to this litigation, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products, which are defective and unreasonably dangerous to consumers, including Plaintiff, because they do not contain adequate warnings or instructions concerning the dangerous characteristics of Roundup® and specifically, the active ingredient glyphosate. These actions were under the ultimate control and supervision of Defendant.

92. Defendant researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its Roundup® products, and in the course of same, directly advertised or marketed the products to consumers and end users, including the Plaintiff, Plaintiff's employer, Plaintiff's co-workers, and persons responsible for consumers (such as employers), and therefore had a duty to warn of the risks associated with the use of Roundup® and glyphosate-containing products.

93. At all times relevant to this litigation, Defendant had a duty to properly test, develop, design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain supply, provide proper warnings, and take such steps as necessary to ensure that its Roundup® products did not cause users and consumers to suffer from unreasonable and dangerous risks. Defendant had a continuing duty to warn the Plaintiff of the dangers associated with Roundup® use and exposure. Defendant, as manufacturer, seller, or distributor of chemical herbicides is held to the knowledge of an expert in the field.

94. At the time of manufacture, Defendant could have provided the warnings or instructions regarding the full and complete risks of Roundup® and glyphosate-containing products because it knew or should have known of the unreasonable risks of harm associated with the use of and/or exposure to such products.

95. At all times relevant to this litigation, Defendant failed to investigate, study, test, or promote the safety or to minimize the dangers to users and consumers of its product and to those who would foreseeably use or be harmed by Defendant's herbicides, including Plaintiff.

96. Despite the fact that Defendant knew or should have known that Roundup® posed a grave risk of harm, it failed to exercise reasonable care to warn of the dangerous risks associated with use and exposure. The dangerous propensities of its products and the carcinogenic characteristics of glyphosate, as described above, were known to Defendant, or scientifically knowable to Defendant through appropriate research and testing by known methods, at the time it distributed, supplied or sold the product, and not known to end users and consumers, such as Plaintiff and the horticultural company who employed her.

97. Defendant knew or should have known that its products created significant risks of serious bodily harm to consumers, as alleged herein, and Defendant failed to adequately warn consumers and reasonably foreseeable

users of the risks of exposure to its products. Defendant has wrongfully concealed information concerning the dangerous nature of Roundup® and its active ingredient glyphosate, and further made false and/or misleading statements concerning the safety of Roundup® and glyphosate.

98. At all times relevant to this litigation, Defendant's Roundup® products reached the intended consumers, handlers, and users or other persons coming into contact with these products in New York and throughout the United States, including Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendant.

99. Plaintiff was exposed to Defendant's Roundup® products in the course of her employment as a horticultural worker, as described above, without knowledge of their dangerous characteristics.

100. At all times relevant to this litigation, Plaintiff used and/or was exposed to the use of Defendant's Roundup® products in their intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

101. Plaintiff could not have reasonably discovered the defects and risks associated with Roundup® or glyphosate-containing products prior to or at the time of Plaintiff's exposure. Plaintiff relied upon the skill, superior knowledge, and judgment of Defendant.

102. Defendant knew or should have known that the minimal warnings disseminated with its Roundup® products were inadequate, but they failed to communicate adequate information on the dangers and safe use/exposure and failed to communicate warnings and instructions that were appropriate and adequate to render the products safe for their ordinary, intended and reasonably foreseeable uses, including agricultural and horticultural applications.

103. The information that Defendant did provide or communicate failed to contain relevant warnings, hazards, and precautions that would have enabled horticultural workers such as Plaintiff to utilize the products safely and with adequate protection. Instead, Defendant disseminated information that was inaccurate, false, and misleading and which failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries with use of and/or exposure to Roundup® and glyphosate; continued to aggressively promote the efficacy of its products, even after it knew or should have known of the unreasonable risks from use or exposure; and concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information or research about the risks and dangers of exposure to Roundup® and glyphosate.

104. To this day, Defendant has failed to adequately and accurately warn of the true risks of Plaintiff's injuries associated with the use of and exposure to Roundup® and its active ingredient glyphosate, a probable carcinogen.

105. As a result of their inadequate warnings, Defendant's Roundup® products were defective and unreasonably dangerous when they left the possession and/or control of Defendant, were distributed by Defendant, and used by Plaintiff in the course of her employment as a horticultural worker.

106. Defendant is liable to Plaintiff for injuries caused by its negligent or willful failure, as described above, to provide adequate warnings or other clinically relevant information and data regarding the appropriate use of its products and the risks associated with the use of or exposure to Roundup® and glyphosate.

107. The defects in Defendant's Roundup® products were substantial and contributing factors in causing Plaintiff's injuries, and, but for Defendant's misconduct and omissions, Plaintiff would not have sustained their injuries.

108. Had Defendant provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with its Roundup® products, Plaintiff could have avoided the risk of developing injuries as alleged herein and the company who employed Plaintiff could have obtained alternative herbicides.

109. As a direct and proximate result of Defendant placing its defective Roundup® products into the stream of commerce, Plaintiff has suffered and continues to suffer severe injuries, and has endured physical pain and discomfort, as well as economic hardship, including considerable financial expenses for medical care and treatment. Plaintiff will continue to incur these expenses in the future.

110. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

**CLAIM THREE
NEGLIGENCE**

111. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.
112. Defendant, directly or indirectly, caused Roundup® products to be sold, distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiff.
113. At all times relevant to this litigation, Defendant had a duty to exercise reasonable care in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging, sale, and distribution of its Roundup® products, including the duty to take all reasonable steps necessary to manufacture, promote, and/or sell a product that was not unreasonably dangerous to consumers and users of the product.
114. At all times relevant to this litigation, Defendant had a duty to exercise reasonable care in the marketing, advertisement, and sale of the Roundup® products. Defendant's duty of care owed to consumers and the general public included providing accurate, true, and correct information concerning the risks of using Roundup® and appropriate, complete, and accurate warnings concerning the potential adverse effects of exposure to Roundup®, and, in particular, its active ingredient glyphosate.
115. At all times relevant to this litigation, Defendant knew or, in the exercise of reasonable care, should have known of the hazards and dangers of Roundup® and specifically, the carcinogenic properties of the chemical glyphosate.
116. Accordingly, at all times relevant to this litigation, Defendant knew or, in the exercise of reasonable care, should have known that use of or exposure to its Roundup® products could cause or be associated with Plaintiff's injuries and thus created a dangerous and unreasonable risk of injury to the users of these products, including Plaintiff.
117. Defendant also knew or, in the exercise of reasonable care, should have known that users and consumers of Roundup® were unaware of the risks and the magnitude of the risks associated with use of and/or exposure to Roundup® and glyphosate-containing products.
118. As such, Defendant breached its duty of reasonable care and failed to exercise ordinary care in the design, research, development, manufacture, testing, marketing, supply, promotion, advertisement, packaging, sale, and distribution of its Roundup® products, in that Defendant manufactured and produced defective herbicides containing the chemical glyphosate, knew or had reason to know of the defects inherent in its products, knew or had reason to know that a user's or consumer's exposure to the products created a significant risk of harm and unreasonably dangerous side effects, and failed to prevent or adequately warn of these risks and injuries.
119. Despite its ability and means to investigate, study, and test its products and to provide adequate warnings, Defendant has failed to do so. Indeed, Defendant has wrongfully concealed information and has further made false and/or misleading statements concerning the safety and/or exposure to Roundup® and glyphosate.
120. Defendant's negligence included:
- a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing its Roundup® products without thorough and adequate pre- and post-market testing;
 - b. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing Roundup® while negligently and/or intentionally concealing and failing to disclose the results of trials, tests, and studies of exposure to glyphosate, and, consequently, the risk of serious harm associated with human use of and exposure to Roundup®;
 - c. Failing to undertake sufficient studies and conduct necessary tests to determine whether or not Roundup® products and glyphosate-containing products were safe for their intended use in agriculture and horticulture;
 - d. Failing to use reasonable and prudent care in the design, research, manufacture, and development of Roundup® products so as to avoid the risk of serious harm associated with the prevalent use of Roundup®/glyphosate as an herbicide;
 - e. Failing to design and manufacture Roundup® products so as to ensure they were at least as safe and effective as other herbicides on the market;

- f. Failing to provide adequate instructions, guidelines, and safety precautions to those persons who Defendant could reasonably foresee would use and be exposed to its Roundup® products;
- g. Failing to disclose to Plaintiffs, users/consumers, and the general public that use of and exposure to Roundup® presented severe risks of cancer and other grave illnesses;
- h. Failing to warn Plaintiff, consumers, and the general public that the product's risk of harm was unreasonable and that there were safer and effective alternative herbicides available to Plaintiff and other consumers;
- i. Systematically suppressing or downplaying contrary evidence about the risks, incidence, and prevalence of the side effects of Roundup® and glyphosate-containing products;
- j. Representing that its Roundup® products were safe for their intended use when, in fact, Defendant knew or should have known that the products were not safe for their intended purpose;
- k. Declining to make or propose any changes to Roundup® products' labeling or other promotional materials that would alert the consumers and the general public of the risks of Roundup® and glyphosate;
- l. Advertising, marketing, and recommending the use of the Roundup® products, while concealing and failing to disclose or warn of the dangers known by Defendant to be associated with or caused by the use of or exposure to Roundup® and glyphosate;
- m. Continuing to disseminate information to its consumers, which indicate or imply that Defendant's Roundup® products are not unsafe for use in the agricultural and horticultural industries; and
- n. Continuing the manufacture and sale of its products with the knowledge that the products were unreasonably unsafe and dangerous.

121. Defendant knew and/or should have known that it was foreseeable that consumers such as Plaintiff would suffer injuries as a result of Defendant's failure to exercise ordinary care in the manufacturing, marketing, labeling, distribution, and sale of Roundup®.

122. Plaintiff did not know the nature and extent of the injuries that could result from the intended use of and/or exposure to Roundup® or its active ingredient glyphosate.

123. Defendant's negligence was the proximate cause of the injuries, harm, and economic losses that Plaintiff suffered, and will continue to suffer, as described herein.

124. Defendant's conduct, as described above, was reckless. Defendant regularly risks the lives of consumers and users of their products, including Plaintiff, with full knowledge of the dangers of its products. Defendant has made conscious decisions not to redesign, re-label, warn, or inform the unsuspecting public, including Plaintiffs. Defendant's reckless conduct therefore warrants an award of punitive damages.

125. As a proximate result of Defendant's wrongful acts and omissions in placing its defective Roundup® products into the stream of commerce without adequate warnings of the hazardous and carcinogenic nature of glyphosate, Plaintiff has suffered and continues to suffer severe and permanent physical and emotional injuries. Plaintiff has endured pain and suffering, has suffered economic losses (including significant expenses for medical care and treatment) and will continue to incur these expenses in the future.

126. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

CLAIM FOUR BREACH OF IMPLIED WARRANTIES

127. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

128. At all times relevant to this litigation, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting its Roundup® products, which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing Roundup® products into the stream of commerce. These actions were under the ultimate control and supervision of Defendant.

129. Before the time that Plaintiff was exposed to the use of the aforementioned Roundup® products, Defendant impliedly warranted to its consumers—including Plaintiff—that its Roundup® products were of merchantable quality and safe and fit for the use for which they were intended; specifically, as horticultural herbicides.

130. Defendant, however, failed to disclose that Roundup® has dangerous propensities when used as intended and that the use of and/or exposure to Roundup® and glyphosate-containing products carries an increased risk of developing severe injuries, including Plaintiff's injuries.

131. Plaintiff reasonably relied upon the skill, superior knowledge and judgment of Defendant and upon its implied warranties that the Roundup® products were of merchantable quality and fit for their intended purpose or use.

132. Upon information and belief, Plaintiff was at all relevant times in privity with Defendant.

133. Plaintiff is the intended third-party beneficiaries of implied warranties made by Defendant to the purchasers of its horticultural herbicides, and as such Plaintiff is entitled to assert this claim.

134. The Roundup® products were expected to reach and did in fact reach consumers and users, including Plaintiff, without substantial change in the condition in which they were manufactured and sold by Defendant.

135. At all times relevant to this litigation, Defendant was aware that consumers and users of its products, including Plaintiff, would use Roundup® products as marketed by Defendant, which is to say that Plaintiff was a foreseeable user of Roundup®.

136. Defendant intended that its Roundup® products be used in the manner in which Plaintiff in fact used them and Defendant impliedly warranted each product to be of merchantable quality, safe, and fit for this use, despite the fact that Roundup® was not adequately tested or researched.

137. In reliance upon Defendant's implied warranty, Plaintiff used Roundup® as instructed and labeled and in the foreseeable manner intended, recommended, promoted and marketed by Defendant.

138. Plaintiff could not have reasonably discovered or known of the risks of serious injury associated with Roundup® or glyphosate.

139. Defendant breached its implied warranty to Plaintiff in that its Roundup® products were not of merchantable quality, safe, or fit for their intended use, or adequately tested. Roundup® has dangerous propensities when used as intended and can cause serious injuries, including those injuries complained of herein.

140. The harm caused by Defendant's Roundup® products far outweighed their benefit, rendering the products more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

141. As a direct and proximate result of Defendant's wrongful acts and omissions Plaintiff has suffered severe and permanent physical and emotional injuries. Plaintiff has endured pain and suffering, have suffered economic loss (including significant expenses for medical care and treatment) and will continue to incur these expenses in the future.

142. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in their favor and against Monsanto, awarding as follows:

- A. compensatory damages in an amount to be proven at trial;
- B. punitive damages;
- C. costs including reasonable attorneys' fees, court costs, and other litigation expenses; and
- D. any other relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

The Plaintiff respectfully requests trial by jury in the above case as to all issues.

Respectfully submitted,

/s/ Curtis G. Hoke

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EXHIBIT 10

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JUDI FITZGERALD,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

COMPLAINT

Civil Action No.

JURY TRIAL DEMANDED

Plaintiff Judi Fitzgerald alleges against Monsanto Company as follows:

INTRODUCTION

1. In 1970, Defendant Monsanto Company, Inc. discovered the herbicidal properties of glyphosate and began marketing it in products in 1974 under the brand name Roundup[®]. Roundup[®] is a non-selective herbicide used to kill weeds that commonly compete with the growing of crops. By 2001, glyphosate had become the most-used active ingredient in American agriculture with 85–90 millions of pounds used annually. That number grew to 185 million pounds by 2007.¹ As of 2013, glyphosate was the world's most widely used herbicide.

2. Monsanto is a multinational agricultural biotechnology corporation based in St. Louis, Missouri. It is the world's leading producer of glyphosate. As of 2009, Monsanto was the world's leading producer of seeds, accounting for 27% of the world seed market.² The majority of these seeds are of the Roundup Ready[®] brand. The stated advantage of Roundup Ready[®]

¹ Grube et al, on behalf of EPA, Pesticides Industry Sales and Usage, 2006-2007 Market Estimates, 14, (2011) available at http://www.epa.gov/pesticides/pestsales/07pestsales/market_estimates2007.pdf.

² ETC Group, Who Will Control the Green Economy?, 22, (2011) available at http://www.etcgroup.org/files/publication/pdf_file/ETC_wwctge_4web_Dec2011.pdf.

crops is that they substantially improve a farmer's ability to control weeds, since glyphosate can be sprayed in the fields during the growing season without harming their crops. In 2010, an estimated 70% of corn and cotton, and 90% of soybean, fields in the United States were Roundup Ready[®].³

3. Monsanto's glyphosate products are registered in 130 countries and approved for use on over 100 different crops.⁴ They are ubiquitous in the environment. Numerous studies confirm that glyphosate is found in rivers, streams, and groundwater in agricultural areas where Roundup[®] is used⁵. It has been found in food⁶, in the urine of agricultural workers^{7 8}, and even in the urine of urban dwellers who are not in direct contact with glyphosate.⁹

4. On March 20, 2015, the International Agency for Research on Cancer ("IARC"), an agency of the World Health Organization ("WHO"), issued an evaluation of several herbicides, including glyphosate. That evaluation was based, in part, on studies of exposures to glyphosate in several countries around the world, and it traces the health implications from exposure to glyphosate since 2001.

³ William Neuman and Andrew Pollack, Farmers Cope With Roundup-Resistant Weeds, N.Y. Times, May 3, 2010, available at <http://www.nytimes.com/2010/05/04/business/energy-environment/04weed.html?pagewanted=all>.

⁴ Backgrounder -History of Monsanto's Glyphosate Herbicides, Monsanto, (Sept. 2, 2015), available at http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf.

⁵ See: USGS, USGS Technical Announcement: Widely Used Herbicide Commonly Found in Rain and Streams in the Mississippi River Basin, 2011, available at <http://www.usgs.gov/newsroom/article.asp?ID=2909>; See also: U.S. EPA, Technical Factsheet on: Glyphosate, <http://www.epa.gov/safewater/pdfs/factsheets/soc/tech/glyphosa.pdf>.

⁶ Bohn, et al., Compositional differences in soybeans on the market: Glyphosate accumulates in Roundup Ready GM soybeans, 153 Food Chemistry, 207, (2013), available at <http://www.sciencedirect.com/science/article/pii/S0308814613019201>.

⁷ Acquavella, et al., Glyphosate Biomonitoring for Farmers and Their Families: Results from the Farm Family Exposure Study, 112(3) Environmental Health Perspectives, 321, (2004), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241861/>.

⁸ Guyton, et al. Carcinogenicity of tetrachlorvinphos, parathion, malathion, diazinon and glyphosate, 112 IARC Monographs, 76, section 5.4 (2015), available at [http://dx.doi.org/10.1016/S1470-2045\(15\)70134-8](http://dx.doi.org/10.1016/S1470-2045(15)70134-8).

⁹ Brändli D, Reinacher S, Herbicides found in Human Urine, 1 Ithaka Journal, 270 (2012), available at <http://www.ithaka-journal.net/druckversionen/e052012-herbicides-urine.pdf>.

5. On July 29, 2015, IARC issued the formal monograph relating to glyphosate. In that monograph, the IARC Working Group provides a thorough review of the numerous studies and data relating to glyphosate exposure in humans.

6. The IARC Working Group classified glyphosate as a Group 2A herbicide, which means that it is probably carcinogenic to humans. The IARC Working Group concluded that the cancers most associated with glyphosate exposure are non-Hodgkin lymphoma and other haematopoietic cancers, including lymphocytic lymphoma/chronic lymphocytic leukemia, B-cell lymphoma, and multiple myeloma.¹⁰

7. The IARC evaluation is significant. It confirms what has been believed for years: that glyphosate is toxic to humans.

8. Nevertheless, Monsanto, since it began selling Roundup[®], has represented it as safe to humans and the environment. Indeed, Monsanto has repeatedly proclaimed and continues to proclaim to the world, and particularly to United States consumers, that glyphosate-based herbicides, including Roundup[®], create no unreasonable risks to human health or to the environment.

JURISDICTION AND VENUE

9. Federal diversity jurisdiction in this Court is proper under 28 U.S.C. § 1332 because Plaintiff Judi Fitzgerald is a citizen of a different state from the Defendant Monsanto Company's states of citizenship, and the aggregate amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. This Court has personal jurisdiction over Monsanto under the New York Long-Arm Statute, N.Y. C.P.L.R. § 302, because Monsanto knows or should have known that its

¹⁰ See Guyton, *et al.* Carcinogenicity of tetrachlorvinphos, parathion, malathion, diazinon and glyphosate, *supra*.

Roundup[®] products are sold throughout the State of New York, and, more specifically, caused Roundup[®] to be sold to Judi Fitzgerald's employer in the State of New York.

11. In addition, Monsanto maintains sufficient contacts with the State of New York such that this Court's exercise of personal jurisdiction over it does not offend traditional notions of fair play and substantial justice.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to the claims asserted in this Complaint occurred in this District. Further, Monsanto, as a corporate entity, is deemed to reside in any judicial district in which it is subject to personal jurisdiction.

THE PARTIES

PLAINTIFF

13. Plaintiff Judi Fitzgerald resides in Staunton, Virginia. Plaintiff was exposed to Roundup[®] in St. James, New York, from in and around 1994 to and including 1998.

DEFENDANT

14. Defendant Monsanto Company ("Monsanto") is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri.

15. At all times relevant to this complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and the manufacturer of Roundup[®].

FACTS

16. Glyphosate is a broad-spectrum, non-selective herbicide used in a wide variety of herbicidal products around the world.

17. Plants treated with glyphosate translocate the systemic herbicide to their roots, shoot regions and fruit, where it interferes with the plant's ability to form aromatic amino acids

necessary for protein synthesis. Treated plants generally die within two to three days. Because plants absorb glyphosate, it cannot be completely removed by washing or peeling produce or by milling, baking, or brewing grains.

18. For nearly 40 years, farms across the world have used Roundup[®] without knowing of the dangers its use poses. That is because when Monsanto first introduced Roundup[®], it touted glyphosate as a technological breakthrough: it could kill almost every weed without causing harm either to people or to the environment. Of course, history has shown that not to be true. According to the WHO, the main chemical ingredient of Roundup[®]—glyphosate—is a probable cause of cancer. Those most at risk are farm workers and other individuals with workplace exposure to Roundup[®], such as workers in garden centers, nurseries, and landscapers. Agricultural workers are victims of corporate greed. Monsanto assured the public that Roundup[®] was harmless. In order to prove this, Monsanto championed falsified data and attacked legitimate studies that revealed its dangers. Monsanto led a prolonged campaign of misinformation to convince government agencies, farmers and the general population that Roundup[®] was safe.

The Discovery of Glyphosate and Development of Roundup[®]

19. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto chemist John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-1970s under the brand name Roundup[®].¹¹ From the outset, Monsanto marketed Roundup[®]

¹¹ Backgrounder -History of Monsanto's Glyphosate Herbicide, Monsanto, (Sept. 2, 2015), http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf.

as a “safe” general-purpose herbicide for widespread commercial and consumer use. It still markets Roundup[®] as safe today.¹²

Registration of Herbicides under Federal Law

20. The manufacture, formulation and distribution of herbicides, such as Roundup[®], are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “Act”), 7 U.S.C. § 136 *et seq.* FIFRA requires that all pesticides be registered with the Environmental Protection Agency (“EPA” or “Agency”) prior to their distribution, sale, or use, except as described by the Act. 7 U.S.C. § 136a(a)

21. Because pesticides are toxic to plants, animals, and humans, at least to some degree, the EPA requires as part of the registration process, among other things, a variety of tests to evaluate the potential for exposure to pesticides, toxicity to people and other potential non-target organisms, and other adverse effects on the environment. Registration by the EPA, however, is not an assurance or finding of safety. The determination the Agency must make in registering or re-registering a product is not that the product is “safe,” but rather that use of the product in accordance with its label directions “will not generally cause unreasonable adverse effects on the environment.” 7 U.S.C. § 136a(c)(5)(D).

22. FIFRA defines “unreasonable adverse effects on the environment” to mean “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.” 7 U.S.C. § 136(bb). FIFRA thus requires EPA to make a risk/benefit analysis in determining whether a registration should be granted or allowed to continue to be sold in commerce.

¹² What is Glyphosate?, Monsanto, (Sept. 2, 2015), <http://www.monsanto.com/sitecollectiondocuments/glyphosate-safety-health.pdf>.

23. The EPA and New York State registered Roundup® for distribution, sale, and manufacture in the United States and New York State.

24. FIFRA generally requires that the registrant, Monsanto in the case of Roundup®, conducts the health and safety testing of pesticide products. The EPA has protocols governing the conduct of tests required for registration and the laboratory practices that must be followed in conducting these tests. The data produced by the registrant must be submitted to the EPA for review and evaluation. The government is not required, nor is it able, however, to perform the product tests that are required of the manufacturer.

25. The evaluation of each pesticide product distributed, sold, or manufactured is completed at the time the product is initially registered. The data necessary for registration of a pesticide has changed over time. The EPA is now in the process of re-evaluating all pesticide products through a Congressionally-mandated process called “re-registration.” 7 U.S.C. § 136a-1. In order to reevaluate these pesticides, the EPA is demanding the completion of additional tests and the submission of data for the EPA’s review and evaluation.

26. In the case of glyphosate, and therefore Roundup®, the EPA had planned on releasing its preliminary risk assessment—in relation to the reregistration process—no later than July 2015. The EPA completed its review of glyphosate in early 2015, but it delayed releasing the risk assessment pending further review in light of the WHO’s health-related findings.

Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup

27. Based on early studies that glyphosate could cause cancer in laboratory animals, the EPA originally classified glyphosate as *possibly carcinogenic to humans* (Group C) in 1985. After pressure from Monsanto, including contrary studies it provided to the EPA, the EPA changed its classification to *evidence of non-carcinogenicity in humans* (Group E) in 1991. In so

classifying glyphosate, however, the EPA made clear that the designation did not mean the chemical does not cause cancer: “It should be emphasized, however, that designation of an agent in Group E is based on the available evidence at the time of evaluation and should not be interpreted as a definitive conclusion that the agent will not be a carcinogen under any circumstances.”¹³

28. On two occasions, the EPA found that the laboratories hired by Monsanto to test the toxicity of its Roundup[®] products for registration purposes committed fraud.

29. In the first instance, Monsanto, in seeking initial registration of Roundup[®] by EPA, hired Industrial Bio-Test Laboratories (“IBT”) to perform and evaluate pesticide toxicology studies relating to Roundup[®].¹⁴ IBT performed about 30 tests on glyphosate and glyphosate-containing products, including nine of the 15 residue studies needed to register Roundup[®].

30. In 1976, the United States Food and Drug Administration (“FDA”) performed an inspection of IBT that revealed discrepancies between the raw data and the final report relating to the toxicological impacts of glyphosate. The EPA subsequently audited IBT; it too found the toxicology studies conducted for the Roundup[®] herbicide to be invalid.¹⁵ An EPA reviewer stated, after finding “routine falsification of data” at IBT, that it was “hard to believe the

¹³ U.S. Environmental Protection Agency, Memorandum, Subject: SECOND Peer Review of Glyphosate, 1, (1991), available at http://www.epa.gov/pesticides/chem_search/cleared_reviews/csr_PC-103601_30-Oct-91_265.pdf.

¹⁴ Backgrounder. Testing Fraud: IBT and Craven Laboratories, Monsanto, (Sept. 2, 2015), available at http://www.monsanto.com/products/documents/glyphosate-background-materials/ibt_craven_bkg.pdf.

¹⁵ U.S. EPA, Summary of the IBT Review Program Office of Pesticide Programs, (1983), available at <http://nepis.epa.gov/Exe/ZyNET.exe/91014ULV.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1981+Thru+1985&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C81thru85%5CTxt%5C00000022%5C91014ULV.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>.

scientific integrity of the studies when they said they took specimens of the uterus from male rabbits.”¹⁶

31. Three top executives of IBT were convicted of fraud in 1983.

32. In the second incident of data falsification, Monsanto hired Craven Laboratories in 1991 to perform pesticide and herbicide studies, including for Roundup[®]. In that same year, the owner of Craven Laboratories and three of its employees were indicted, and later convicted, of fraudulent laboratory practices in the testing of pesticides and herbicides.¹⁷

33. Despite the falsity of the tests that underlie its registration, within a few years of its launch, Monsanto was marketing Roundup[®] in 115 countries.

The Importance of Roundup[®] to Monsanto's Market Dominance Profits

34. The success of Roundup[®] was key to Monsanto's continued reputation and dominance in the marketplace. Largely due to the success of Roundup[®] sales, Monsanto's agriculture division was out-performing its chemicals division's operating income, and that gap increased yearly. But with its patent for glyphosate expiring in the United States in the year 2000, Monsanto needed a strategy to maintain its Roundup[®] market dominance and to ward off impending competition.

35. In response, Monsanto began the development and sale of genetically engineered Roundup Ready[®] seeds in 1996. Since Roundup Ready[®] crops are resistant to glyphosate; farmers can spray Roundup[®] onto their fields during the growing season without harming the crop. This allowed Monsanto to expand its market for Roundup[®] even further; by 2000,

¹⁶ Robin, Marie-Monique. The World According to Monsanto: Pollution, Corruption and the Control of the World's Food Supply (2011). Citing U.S. EPA. Data validation. Memo from K. Locke, Toxicology Branch, to R. Taylor, Registration Branch. Washington, D.C. (August 9, 1978).

¹⁷ Backgrounder. Testing Fraud: IBT and Craven Laboratories, Monsanto, supra.

Monsanto's biotechnology seeds were planted on more than 80 million acres worldwide and nearly 70% of American soybeans were planted from Roundup Ready[®] seeds. It also secured Monsanto's dominant share of the glyphosate/Roundup[®] market through a marketing strategy that coupled proprietary Roundup Ready[®] seeds with continued sales of its Roundup[®] herbicide.

36. Through a three-pronged strategy of increased production, decreased prices, and by coupling with Roundup Ready[®] seeds, Roundup[®] became Monsanto's most profitable product. In 2000, Roundup[®] accounted for almost \$2.8 billion in sales, outselling other herbicides by a margin of five to one, and accounting for close to half of Monsanto's revenue.¹⁸ Today, glyphosate remains one of the world's largest herbicides by sales volume.

Monsanto has known for decades that it falsely advertises the safety of Roundup[®]

37. In 1996, the New York Attorney General ("NYAG") filed a lawsuit against Monsanto based on its false and misleading advertising of Roundup[®] products. Specifically, the lawsuit challenged Monsanto's general representations that its spray-on glyphosate-based herbicides, including Roundup[®], were "**safer than table salt**" and "**practically non-toxic**" to mammals, birds, and fish. Among the representations the NYAG found deceptive and misleading about the human and environmental safety of Roundup[®] are the following:

- a) Remember that environmentally friendly Roundup herbicide is biodegradable. It won't build up in the soil so you can use Roundup with confidence along customers' driveways, sidewalks and fences ...
- b) And remember that Roundup is biodegradable and won't build up in the soil. That will give you the environmental confidence you need to use Roundup everywhere you've got a weed, brush, edging or trimming problem.

¹⁸ David Barboza, The Power of Roundup; A Weed Killer Is A Block for Monsanto to Build On, N.Y. Times, Aug. 2, 2001, available at <http://www.nytimes.com/2001/08/02/business/the-power-of-roundup-a-weed-killer-is-a-block-for-monsanto-to-build-on.html>.

- c) Roundup biodegrades into naturally occurring elements.
- d) Remember that versatile Roundup herbicide stays where you put it. That means there's no washing or leaching to harm customers' shrubs or other desirable vegetation.
- e) This non-residual herbicide will not wash or leach in the soil. It ... stays where you apply it.
- f) You can apply Accord with “ confidence because it will stay where you put it” it bonds tightly to soil particles, preventing leaching. Then, soon after application, soil microorganisms biodegrade Accord into natural products.
- g) Glyphosate is less toxic to rats than table salt following acute oral ingestion.
- h) Glyphosate's safety margin is much greater than required. It has over a 1,000-fold safety margin in food and over a 700-fold safety margin for workers who manufacture it or use it.
- i) You can feel good about using herbicides by Monsanto. They carry a toxicity category rating of 'practically non-toxic' as it pertains to mammals, birds and fish.
- j) “Roundup can be used where kids and pets will play and breaks down into natural material.” This ad depicts a person with his head in the ground and a pet dog standing in an area which has been treated with Roundup.¹⁹

38. On November 19, 1996, Monsanto entered into an Assurance of Discontinuance with NYAG, in which Monsanto agreed, among other things, “to cease and desist from publishing or broadcasting any advertisements [in New York] that represent, directly or by implication” that:

- a) its glyphosate-containing pesticide products or any component thereof are safe, non-toxic, harmless or free from risk.

¹⁹ *In the Matter of Monsanto Company*, Office of the Attorney General of the State of New York, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (Nov. 1996).

* * *

b) its glyphosate-containing pesticide products or any component thereof manufactured, formulated, distributed or sold by Monsanto are biodegradable

* * *

c) its glyphosate-containing pesticide products or any component thereof stay where they are applied under all circumstances and will not move through the environment by any means.

* * *

d) its glyphosate-containing pesticide products or any component thereof are "good" for the environment or are "known for their environmental characteristics."

* * *

e) glyphosate-containing pesticide products or any component thereof are safer or less toxic than common consumer products other than herbicides;

f) its glyphosate-containing products or any component thereof might be classified as "practically non-toxic."

39. Monsanto did not alter its advertising in the same manner in any state other than New York, and on information and belief still has not done so today.

40. In 2009, France's highest court ruled that Monsanto had not told the truth about the safety of Roundup[®]. The French court affirmed an earlier judgement that Monsanto had falsely advertised its herbicide Roundup[®] as "biodegradable" and that it "left the soil clean."²⁰

²⁰ Monsanto Guilty in 'false ad' row. BBC, Oct. 15, 2009, available at <http://news.bbc.co.uk/2/hi/europe/8308903.stm>.

Classifications and Assessments of Glyphosate

41. The IARC process for the classification of glyphosate followed the stringent procedures for the evaluation of a chemical agent. Over time, the IARC Monograph program has reviewed 980 agents. Of those reviewed, it has determined 116 agents to be Group 1 (Known Human Carcinogens); 73 agents to be Group 2A (Probable Human Carcinogens); 287 agents to be Group 2B (Possible Human Carcinogens); 503 agents to be Group 3 (Not Classified); and one agent to be Probably Not Carcinogenic.

42. The established procedure for IARC Monograph evaluations is described in the IARC Programme's Preamble.²¹ Evaluations are performed by panels of international experts, selected on the basis of their expertise and the absence of actual or apparent conflicts of interest.

43. One year before the Monograph meeting, the meeting is announced and there is a call both for data and for experts. Eight months before the Monograph meeting, the Working Group membership is selected and the sections of the Monograph are developed by the Working Group members. One month prior to the Monograph meeting, the call for data is closed and the various draft sections are distributed among Working Group members for review and comment. Finally, at the Monograph meeting, the Working Group finalizes review of all literature, evaluates the evidence in each category, and completes the overall evaluation. Within two weeks after the Monograph meeting, the summary of the Working Group findings are published in *Lancet Oncology*, and within a year after the meeting, the final Monograph is finalized and published.

44. In assessing an agent, the IARC Working Group reviews the following information: (a) human, experimental, and mechanistic data; (b) all pertinent epidemiological

²¹ World Health Organization, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Preamble*, (2006), available at <http://monographs.iarc.fr/ENG/Preamble/CurrentPreamble.pdf>.

studies and cancer bioassays; and (c) representative mechanistic data. The studies must be publicly available and have sufficient detail for meaningful review, and reviewers cannot be associated with the underlying study.

45. In March 2015, IARC reassessed glyphosate. The summary published in *The Lancet Oncology* reported that glyphosate is a Group 2A agent and probably carcinogenic in humans.

46. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph 112. For Volume 112, the volume that assessed glyphosate, a Working Group of 17 experts from 11 countries met at IARC from March 3–10, 2015 to assess the carcinogenicity of certain herbicides, including glyphosate. The March meeting culminated nearly a one-year review and preparation by the IARC Secretariat and the Working Group, including a comprehensive review of the latest available scientific evidence. According to published procedures, the Working Group considered “reports that have been published or accepted for publication in the openly available scientific literature” as well as “data from governmental reports that are publicly available”.

47. The studies considered the following exposure groups: occupational exposure of farmers and tree nursery workers in the United States, forestry workers in Canada and Finland and municipal weed-control workers in the United Kingdom; and para-occupational exposure in farming families.

48. Glyphosate was identified as the second-most used household herbicide in the United States for weed control between 2001 and 2007 and the most heavily used herbicide in the world in 2012.

49. Exposure pathways are identified as air (especially during spraying), water, and food. Community exposure to glyphosate is widespread and found in soil, air, surface water, and groundwater, as well as in food.

50. The assessment of the IARC Working Group identified several case control studies of occupational exposure in the United States, Canada, and Sweden. These studies show a human health concern from agricultural and other work-related exposure to glyphosate.

51. The IARC Working Group found an increased risk between exposure to glyphosate and non-Hodgkin lymphoma (“NHL”) and several subtypes of NHL, and the increased risk persisted after adjustment for other pesticides.

52. The IARC Working Group also found that glyphosate caused DNA and chromosomal damage in human cells. One study in community residents reported increases in blood markers of chromosomal damage (micronuclei) after glyphosate formulations were sprayed.

53. In male CD-1 mice, glyphosate induced a positive trend in the incidence of a rare tumor, renal tubule carcinoma. A second study reported a positive trend for haemangiosarcoma in male mice. Glyphosate increased pancreatic islet-cell adenoma in male rats in two studies. A glyphosate formulation promoted skin tumors in an initiation-promotion study in mice.

54. The IARC Working Group also noted that glyphosate has been detected in the urine of agricultural workers, indicating absorption. Soil microbes degrade glyphosate to aminomethylphosphoric acid (AMPA). Blood AMPA detection after exposure suggests intestinal microbial metabolism in humans.

55. The IARC Working Group further found that glyphosate and glyphosate formulations induced DNA and chromosomal damage in mammals, and in human and animal cells in utero.

56. The IARC Working Group also noted genotoxic, hormonal, and enzymatic effects in mammals exposed to glyphosate.²² Essentially, glyphosate inhibits the biosynthesis of aromatic amino acids, which leads to several metabolic disturbances, including the inhibition of protein and secondary product biosynthesis and general metabolic disruption.

57. The IARC Working Group also reviewed an Agricultural Health Study, consisting of a prospective cohort of 57,311 licensed pesticide applicators in Iowa and North Carolina. While this study differed from others in that it was based on a self-administered questionnaire, the results support an association between glyphosate exposure and Multiple Myeloma, Hairy Cell Leukemia (HCL), and Chronic Lymphocytic Leukemia (CLL), in addition to several other cancers.

Other Earlier Findings About Glyphosate's Dangers to Human Health

58. The EPA has a technical fact sheet, as part of its Drinking Water and Health, National Primary Drinking Water Regulations publication, relating to glyphosate. This technical fact sheet predates the IARC March 20, 2015, evaluation. The fact sheet describes the release patterns for glyphosate as follows:

Release Patterns

Glyphosate is released to the environment in its use as a herbicide for controlling woody and herbaceous weeds on forestry, right-of-way, cropped and non-cropped sites. These sites may be around water and in wetlands.

²² Guyton, *et al.* Carcinogenicity of tetrachlorvinphos, parathion, malathion, diazinon and glyphosate, *supra* at 77.

It may also be released to the environment during its manufacture, formulation, transport, storage, disposal and cleanup, and from spills. Since glyphosate is not a listed chemical in the Toxics Release Inventory, data on releases during its manufacture and handling are not available.

Occupational workers and home gardeners may be exposed to glyphosate by inhalation and dermal contact during spraying, mixing, and cleanup. They may also be exposed by touching soil and plants to which glyphosate was applied. Occupational exposure may also occur during glyphosate's manufacture, transport storage, and disposal.²³

59. In 1995, the Northwest Coalition for Alternatives to Pesticides reported that in California, the state with the most comprehensive program for reporting of pesticide-caused illness, glyphosate was the third most commonly-reported cause of pesticide illness among agricultural workers.²⁴

Recent Worldwide Bans on Roundup®/Glyphosate

60. Several countries around the world have instituted bans on the sale of Roundup® and other glyphosate-containing herbicides, both before and since IARC first announced its assessment for glyphosate in March 2015, and more countries undoubtedly will follow suit as the dangers of the use of Roundup® become more widely known. The Netherlands issued a ban on all glyphosate-based herbicides in April 2014, including Roundup®, which takes effect by the end of 2015. In issuing the ban, the Dutch Parliament member who introduced the successful legislation stated: “Agricultural pesticides in user-friendly packaging are sold in abundance to private persons. In garden centers, Roundup® is promoted as harmless, but unsuspecting

²³ U.S. EPA, Technical Factsheet on: Glyphosate, *supra*.

²⁴ Cox, Caroline. Glyphosate, Part 2: Human Exposure and Ecological Effects, 15:4 *J Pesticide Reform*, (1995). Peas, W.S., et al. Preventing pesticide-related illness in California agriculture: Strategies and priorities. Environmental Health Policy Program Report. Berkeley, CA: Univ. of Calif. School of Public Health. Calif. Policy Seminar (1993).

customers have no idea what the risks of this product are. Children, in particular, are sensitive to toxic substances and should therefore not be exposed to it.”²⁵

61. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian Justice Department suspend the use of glyphosate.²⁶

62. France banned the private sale of Roundup[®] and glyphosate following the IARC assessment for Glyphosate.²⁷

63. Bermuda banned both the private and commercial sale of glyphosates, including Roundup[®]. The Bermuda government explained its ban as follows: “Following a recent scientific study carried out by a leading cancer agency, the importation of weed spray ‘Roundup’ has been suspended.”²⁸

64. The Sri Lankan government banned the private and commercial use of glyphosates, particularly out of concern that Glyphosate has been linked to fatal kidney disease in agricultural workers.²⁹

²⁵ Holland’s Parliament Bans Glyphosate Herbicides, The Real Agenda, 14 April 2014, available at <http://real-agenda.com/hollands-parliament-bans-glyphosate-herbicides/>.

²⁶ Christina Sarich, Brazil’s Public Prosecutor Wants to Ban Monsanto’s Chemicals Following Recent Glyphosate-Cancer Link, Global Research 14 May 2015, available at <http://www.globalresearch.ca/brazils-public-prosecutor-wants-to-ban-monsantos-chemicals-following-recent-glyphosate-cancer-link/5449440> ; *see* Ministério Público Federal, MPF/DF reforça pedido para que glifosato seja banido do mercado nacional, April, 14, 2015, available at http://noticias.pgr.mpf.mp.br/noticias/noticias-do-site/copy_of_meio-ambiente-e-patrimonio-cultural/mpf-df-reforca-pedido-para-que-glifosato-seja-banido-do-mercado-nacional.

²⁷ Zoe Schlanger, France Bans Sales of Monsanto’s Roundup in Garden Centers, 3 Months After U.N. Calls it ‘Probable Carcinogen’, Newsweek, June 15, 2015, available at <http://www.newsweek.com/france-bans-sale-monsantos-roundup-garden-centers-after-un-names-it-probable-343311>.

²⁸ Health Minister: Importation of Roundup Weed Spray Suspended, Today in Bermuda, May, 11 2015, available at <http://www.todayinbermuda.com/news/health/item/1471-health-minister-importation-of-roundup-weed-spray-suspended>.

²⁹ Sri Lanka’s New President Puts Immediate Ban on Glyphosate Herbicides, Sustainable Pulse, May 25, 2015, available at <http://sustainablepulse.com/2015/05/25/sri-lankas-new-president-puts-immediate-ban-on-glyphosate-herbicides/#.VeduYk3bKAw>.

65. The government of Columbia announced its ban on using Roundup[®] and glyphosate to destroy illegal plantations of coca, the raw ingredient for cocaine, because of the WHO's finding that glyphosate is probably carcinogenic.³⁰

Plaintiff's Exposure to Roundup[®]

66. Plaintiff Judi Fitzgerald was born in August 1951. From 1994 to 1998, Ms. Fitzgerald was employed at N & O Horticultural Products in St. James, New York. She held the position of Growers Assistant. Ms. Fitzgerald worked principally growing plants and vegetables, both in the nursery and in the fields. During her time working at N & O Horticultural Products, Ms. Fitzgerald recalls that Roundup[®] was used regularly in the greenhouse and outside. She was present when Roundup[®] was sprayed both indoors and outdoors. She recalls the vapors of Roundup[®] inside the building and the wind drifts of Roundup[®] outside when applied. While Ms. Fitzgerald did not personally apply Roundup[®], she was frequently within several feet of the area where Roundup[®] was being sprayed. On at least several occasions, Ms. Fitzgerald became ill within hours of being in the vicinity of the spraying of Roundup[®].

67. During the entire time she worked at N & O Horticultural Products, Ms. Fitzgerald did not know that exposure to Roundup[®] was injurious to her health or to the health of others.

68. Ms. Fitzgerald was diagnosed with Chronic Lymphocytic Leukemia (CLL) on October 15, 2012. She first learned that exposure to Roundup[®] can cause CLL and other serious illnesses sometime after March 2015 when IARC first published its evaluation of glyphosate.

³⁰ Columbia to ban coca spraying herbicide glyphosate, BBC, May 10, 2015, available at <http://www.bbc.com/news/world-latin-america-32677411>.

69. Since becoming ill, Ms. Fitzgerald has been unable to work and had to move from Long Island to Virginia for economic reasons.

CLAIM ONE

STRICT LIABILITY (DESIGN DEFECT)

70. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

71. Plaintiff brings this strict liability claim against Defendant for defective design.

72. At all times relevant to this litigation, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup[®] products, which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing Roundup[®] products into the stream of commerce. These actions were under the ultimate control and supervision of Defendant. At all times relevant to this litigation, Defendant designed, researched, developed, manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed, sold, and distributed the Roundup[®] products used by the Plaintiff, as described above.

73. At all times relevant to this litigation, Defendant's Roundup[®] products were manufactured, designed, and labeled in an unsafe, defective, and inherently dangerous manner that was dangerous for use by or exposure to the public, and, in particular, the Plaintiff.

74. At all times relevant to this litigation, Defendant's Roundup[®] products reached the intended consumers, handlers, and users or other persons coming into contact with these products in New York and throughout the United States, including Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendant.

75. Defendant's Roundup[®] products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendant were defective in design and formulation in that when they left the hands of the Defendant's manufacturers and/or suppliers, they were unreasonably dangerous and dangerous to an extent beyond that which an ordinary consumer would contemplate.

76. Defendant's Roundup[®] products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendant were defective in design and formulation in that when they left the hands of Defendant's manufacturers and/or suppliers, the foreseeable risks exceeded the alleged benefits associated with their design and formulation.

77. At all times relevant to this action, Defendant knew or had reason to know that its Roundup[®] products were defective and were inherently dangerous and unsafe when used in the manner instructed and provided by Defendant.

78. Therefore, at all times relevant to this litigation, Defendant's Roundup[®] products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold and marketed by Defendant were defective in design and formulation, in one or more of the following ways:

- a. When placed in the stream of commerce, Defendant's Roundup[®] products were defective in design and formulation, and, consequently, dangerous to an extent beyond that which an ordinary consumer would contemplate.
- b. When placed in the stream of commerce, Defendant's Roundup[®] products were unreasonably dangerous in that they were hazardous and posed a

grave risk of cancer and other serious illnesses when used in a reasonably anticipated manner.

- c. When placed in the stream of commerce, Defendant's Roundup[®] products contained unreasonably dangerous design defects and were not reasonably safe when used in a reasonably anticipated or intended manner.
- d. Defendant did not sufficiently test, investigate, or study its Roundup[®] products and, specifically, the active ingredient glyphosate.
- e. Exposure to Roundup[®] and glyphosate-containing products presents a risk of harmful side effects that outweigh any potential utility stemming from the use of the herbicide.
- f. Defendant knew or should have known at the time of marketing its Roundup[®] products that exposure to Roundup[®] and specifically, its active ingredient glyphosate, could result in cancer and other severe illnesses and injuries.
- g. Defendant did not conduct adequate post-marketing surveillance of its Roundup[®] products.
- h. Defendant could have employed safer alternative designs and formulations.

79. Plaintiff was exposed to Defendant's Roundup[®] products in the course of her employment as a horticultural worker, as described above, without knowledge of their dangerous characteristics.

80. At all times relevant to this litigation, Plaintiff used and/or was exposed to the use of Defendant's Roundup[®] products in an intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

81. Plaintiff could not have reasonably discovered the defects and risks associated with Roundup[®] or glyphosate-containing products before or at the time of exposure.

82. The harm caused by Defendant's Roundup[®] products far outweighed their benefit, rendering Defendant's products dangerous to an extent beyond that which an ordinary consumer would contemplate. Defendant's Roundup[®] products were and are more dangerous than alternative products and Defendant could have designed its Roundup[®] products to make them less dangerous. Indeed, at the time that Defendant designed its Roundup[®] products, the state of the industry's scientific knowledge was such that a less risky design or formulation was attainable.

83. At the time Roundup[®] products left Defendant's control, there was a practical, technically feasible and safer alternative design that would have prevented the harm without substantially impairing the reasonably anticipated or intended function of Defendant's herbicides.

84. Defendant's defective design of its Roundup[®] products was willful, wanton, fraudulent, malicious, and conducted with reckless disregard for the health and safety of users of the Roundup[®] products, including the Plaintiff herein.

85. Therefore, as a result of the unreasonably dangerous condition of its Roundup[®] products, Defendant is strictly liable to Plaintiff.

86. The defects in Defendant's Roundup[®] products were substantial and contributing factors in causing Plaintiff's grave injuries, and, but for Defendant's misconduct and omissions, Plaintiff would not have sustained her injuries.

87. Defendant's conduct, as described above, was reckless. Defendant risked the lives of consumers and users of its products, including Plaintiff, with knowledge of the safety problems associated with Roundup[®] and glyphosate-containing products, and suppressed this knowledge from the general public. Defendant made conscious decisions not to redesign, warn, or inform the unsuspecting public. Defendant's reckless conduct warrants an award of punitive damages.

88. As a direct and proximate result of Defendant placing its defective Roundup[®] products into the stream of commerce, Plaintiff has suffered and continues to suffer grave injuries, and has endured physical pain and discomfort, as well as economic hardship, including considerable financial expenses for medical care and treatment. Plaintiff will continue to incur these expenses in the future.

89. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

CLAIM TWO

STRICT LIABILITY (FAILURE TO WARN)

90. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

91. Plaintiff brings this strict liability claim against Defendant for failure to warn.

92. At all times relevant to this litigation, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup[®] products, which are defective and unreasonably dangerous to consumers, including Plaintiff, because they do not contain adequate warnings or instructions concerning the dangerous characteristics of Roundup[®] and specifically, the active ingredient glyphosate. These actions were under the ultimate control and supervision of Defendant.

93. Defendant researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its Roundup[®] products, and in the course of same, directly advertised or marketed the products to consumers and end users, including the Plaintiff, Plaintiff's employer, Plaintiff's co-workers, and persons responsible for consumers (such as employers), and therefore had a duty to warn of the risks associated with the use of Roundup[®] and glyphosate-containing products.

94. At all times relevant to this litigation, Defendant had a duty to properly test, develop, design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain supply, provide proper warnings, and take such steps as necessary to ensure that its Roundup[®] products did not cause users and consumers to suffer from unreasonable and dangerous risks. Defendant had a continuing duty to warn the Plaintiff of the dangers associated with Roundup[®] use and exposure. Defendant, as manufacturer, seller, or distributor of chemical herbicides is held to the knowledge of an expert in the field.

95. At the time of manufacture, Defendant could have provided the warnings or instructions regarding the full and complete risks of Roundup[®] and glyphosate-containing products because it knew or should have known of the unreasonable risks of harm associated with the use of and/or exposure to such products.

96. At all times relevant to this litigation, Defendant failed to investigate, study, test, or promote the safety or to minimize the dangers to users and consumers of its products and to those who would foreseeably use or be harmed by Defendant's herbicides, including Plaintiff.

97. Despite the fact that Defendant knew or should have known that Roundup[®] posed a grave risk of harm, it failed to exercise reasonable care to warn of the dangerous risks associated with use and exposure. The dangerous propensities of its products and the carcinogenic characteristics of glyphosate, as described above, were known to Defendant, or scientifically knowable to Defendant through appropriate research and testing by known methods, at the time it distributed, supplied, or sold the product, and not known to end users and consumers, such as Plaintiff and the horticultural company who employed her.

98. Defendant knew or should have known that its products created significant risks of serious bodily harm to consumers, as alleged herein, and Defendant failed to adequately warn consumers and reasonably foreseeable users of the risks of exposure to its products. Defendant has wrongfully concealed information concerning the dangerous nature of Roundup[®] and its active ingredient glyphosate, and further made false and/or misleading statements concerning the safety of Roundup[®] and glyphosate.

99. At all times relevant to this litigation, Defendant's Roundup[®] products reached the intended consumers, handlers, and users or other persons coming into contact with these products in New York and throughout the United States, including Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendant.

100. Plaintiff was exposed to Defendant's Roundup[®] products in the course of her employment as a horticultural worker, as described above, without knowledge of their dangerous characteristics.

101. At all times relevant to this litigation, Plaintiff used and/or was exposed to the use of Defendant's Roundup[®] products in their intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

102. Plaintiff could not have reasonably discovered the defects and risks associated with Roundup[®] or glyphosate-containing products prior to or at the time of Plaintiff's exposure. Plaintiff relied upon the skill, superior knowledge, and judgment of Defendant.

103. Defendant knew or should have known that the minimal warnings disseminated with its Roundup[®] products were inadequate, but they failed to communicate adequate information on the dangers and safe use/exposure and failed to communicate warnings and instructions that were appropriate and adequate to render the products safe for their ordinary, intended and reasonably foreseeable uses, including agricultural and horticultural applications.

104. The information that Defendant did provide or communicate failed to contain relevant warnings, hazards, and precautions that would have enabled horticultural workers such as Plaintiff to utilize the products safely and with adequate protection. Instead, Defendant disseminated information that was inaccurate, false, and misleading and which failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries with use of and/or exposure to Roundup[®] and glyphosate; continued to aggressively promote the efficacy of its products, even after it knew or should have known of the unreasonable risks from use or exposure; and concealed, downplayed, or otherwise suppressed,

through aggressive marketing and promotion, any information or research about the risks and dangers of exposure to Roundup[®] and glyphosate.

105. To this day, Defendant has failed to adequately and accurately warn of the true risks of Plaintiff's injuries associated with the use of and exposure to Roundup[®] and its active ingredient glyphosate, a probable carcinogen.

106. As a result of their inadequate warnings, Defendant's Roundup[®] products were defective and unreasonably dangerous when they left the possession and/or control of Defendant, were distributed by Defendant, and used by Plaintiff in the course of her employment as a horticultural worker.

107. Defendant is liable to Plaintiff for injuries caused by its negligent or willful failure, as described above, to provide adequate warnings or other clinically relevant information and data regarding the appropriate use of its products and the risks associated with the use of or exposure to Roundup[®] and glyphosate.

108. The defects in Defendant's Roundup[®] products were substantial and contributing factors in causing Plaintiff's injuries, and, but for Defendant's misconduct and omissions, Plaintiff would not have sustained their injuries.

109. Had Defendant provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with its Roundup[®] products, Plaintiff could have avoided the risk of developing injuries as alleged herein and the company who employed Plaintiff could have obtained alternative herbicides.

110. As a direct and proximate result of Defendant placing its defective Roundup[®] products into the stream of commerce, Plaintiff has suffered and continues to suffer severe injuries, and has endured physical pain and discomfort, as well as economic hardship, including

considerable financial expenses for medical care and treatment. Plaintiff will continue to incur these expenses in the future.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

CLAIM THREE

NEGLIGENCE

111. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

112. Defendant, directly or indirectly, caused Roundup[®] products to be sold, distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiff.

113. At all times relevant to this litigation, Defendant had a duty to exercise reasonable care in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging, sale, and distribution of its Roundup[®] products, including the duty to take all reasonable steps necessary to manufacture, promote, and/or sell a product that was not unreasonably dangerous to consumers and users of the product.

114. At all times relevant to this litigation, Defendant had a duty to exercise reasonable care in the marketing, advertisement, and sale of the Roundup[®] products. Defendant's duty of care owed to consumers and the general public included providing accurate, true, and correct information concerning the risks of using Roundup[®] and appropriate, complete, and accurate warnings concerning the potential adverse effects of exposure to Roundup[®], and, in particular, its active ingredient glyphosate.

115. At all times relevant to this litigation, Defendant knew or, in the exercise of reasonable care, should have known of the hazards and dangers of Roundup[®] and specifically, the carcinogenic properties of the chemical glyphosate.

116. Accordingly, at all times relevant to this litigation, Defendant knew or, in the exercise of reasonable care, should have known that use of or exposure to its Roundup[®] products could cause or be associated with Plaintiff's injuries and thus created a dangerous and unreasonable risk of injury to the users of these products, including Plaintiff.

117. Defendant also knew or, in the exercise of reasonable care, should have known that users and consumers of Roundup[®] were unaware of the risks and the magnitude of the risks associated with use of and/or exposure to Roundup[®] and glyphosate-containing products.

118. As such, Defendant breached its duty of reasonable care and failed to exercise ordinary care in the design, research, development, manufacture, testing, marketing, supply, promotion, advertisement, packaging, sale, and distribution of its Roundup[®] products, in that Defendant manufactured and produced defective herbicides containing the chemical glyphosate, knew or had reason to know of the defects inherent in its products, knew or had reason to know that a user's or consumer's exposure to the products created a significant risk of harm and unreasonably dangerous side effects, and failed to prevent or adequately warn of these risks and injuries.

119. Despite its ability and means to investigate, study, and test its products and to provide adequate warnings, Defendant has failed to do so. Indeed, Defendant has wrongfully concealed information and has further made false and/or misleading statements concerning the safety and/or exposure to Roundup[®] and glyphosate.

120. Defendant's negligence included:

- a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing its Roundup[®] products without thorough and adequate pre- and post-market testing;
- b. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing Roundup[®] while negligently and/or intentionally concealing and failing to disclose the results of trials, tests, and studies of exposure to glyphosate, and, consequently, the risk of serious harm associated with human use of and exposure to Roundup[®];
- c. Failing to undertake sufficient studies and conduct necessary tests to determine whether or not Roundup[®] products and glyphosate-containing products were safe for their intended use in agriculture and horticulture;
- d. Failing to use reasonable and prudent care in the design, research, manufacture, and development of Roundup[®] products so as to avoid the risk of serious harm associated with the prevalent use of Roundup[®]/glyphosate as an herbicide;
- e. Failing to design and manufacture Roundup[®] products so as to ensure they were at least as safe and effective as other herbicides on the market;
- f. Failing to provide adequate instructions, guidelines, and safety precautions to those persons who Defendant could reasonably foresee would use and be exposed to its Roundup[®] products;

- g. Failing to disclose to Plaintiff, users/consumers, and the general public that use of and exposure to Roundup[®] presented severe risks of cancer and other grave illnesses;
- h. Failing to warn Plaintiff, consumers, and the general public that the product's risk of harm was unreasonable and that there were safer and effective alternative herbicides available to Plaintiff and other consumers;
- i. Systematically suppressing or downplaying contrary evidence about the risks, incidence, and prevalence of the side effects of Roundup[®] and glyphosate-containing products;
- j. Representing that its Roundup[®] products were safe for their intended use when, in fact, Defendant knew or should have known that the products were not safe for their intended purpose;
- k. Declining to make or propose any changes to Roundup[®] products' labeling or other promotional materials that would alert the consumers and the general public of the risks of Roundup[®] and glyphosate;
- l. Advertising, marketing, and recommending the use of the Roundup[®] products, while concealing and failing to disclose or warn of the dangers known by Defendant to be associated with or caused by the use of or exposure to Roundup[®] and glyphosate;
- m. Continuing to disseminate information to its consumers, which indicates or implies that Defendant's Roundup[®] products are not unsafe for use in the agricultural and horticultural industries; and

- n. Continuing the manufacture and sale of its products with the knowledge that the products were unreasonably unsafe and dangerous.

121. Defendant knew and/or should have known that it was foreseeable that consumers such as Plaintiff would suffer injuries as a result of Defendant's failure to exercise ordinary care in the manufacturing, marketing, labeling, distribution, and sale of Roundup[®].

122. Plaintiff did not know the nature and extent of the injuries that could result from the intended use of and/or exposure to Roundup[®] or its active ingredient glyphosate.

123. Defendant's negligence was the proximate cause of the injuries, harm, and economic losses that Plaintiff suffered, and will continue to suffer, as described herein.

124. Defendant's conduct, as described above, was reckless. Defendant regularly risks the lives of consumers and users of their products, including Plaintiff, with full knowledge of the dangers of its products. Defendant has made conscious decisions not to redesign, re-label, warn, or inform the unsuspecting public, including Plaintiff. Defendant's reckless conduct therefore warrants an award of punitive damages.

125. As a proximate result of Defendant's wrongful acts and omissions in placing its defective Roundup[®] products into the stream of commerce without adequate warnings of the hazardous and carcinogenic nature of glyphosate, Plaintiff has suffered and continues to suffer severe and permanent physical and emotional injuries. Plaintiff has endured pain and suffering, has suffered economic losses (including significant expenses for medical care and treatment) and will continue to incur these expenses in the future.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,

attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

CLAIM FOUR

BREACH OF EXPRESS WARRANTIES

126. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

127. At all times relevant to this litigation, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting its Roundup[®] products, which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing Roundup[®] products into the stream of commerce. These actions were under the ultimate control and supervision of Defendant.

128. Defendant had a duty to exercise reasonable care in the research, development, design, testing, packaging, manufacture, inspection, labeling, distributing, marketing, promotion, sale, and release of its Roundup[®] products, including a duty to:

- a. ensure that its products did not cause the user unreasonably dangerous side effects;
- b. warn of dangerous and potentially fatal side effects; and
- c. disclose adverse material facts, such as the true risks associated with the use of and exposure to Roundup[®] and glyphosate-containing products, when making representations to consumers and the general public, including Plaintiff.

129. At all times relevant to this litigation, Defendant expressly represented and warranted to the purchasers of its products, by and through statements made by Defendant in

labels, publications, package inserts, and other written materials intended for consumers and the general public, that its Roundup[®] products were safe to human health and the environment, effective, fit, and proper for their intended use. Defendant advertised, labeled, marketed, and promoted Roundup[®] products, representing the quality to consumers and the public in such a way as to induce their purchase or use, thereby making an express warranty that its Roundup[®] products would conform to the representations.

130. These express representations include incomplete warnings and instructions that purport but fail to include the complete array of risks associated with use of and/or exposure to Roundup[®] and glyphosate, a proven carcinogen. Defendant knew or should have known that the risks expressly included in Roundup[®] warnings and labels did not and do not accurately or adequately set forth the risks of developing the serious injuries complained of herein. Nevertheless, Defendant expressly represented that its Roundup[®] products were safe and effective, that they were safe and effective for use by individuals such as Plaintiff, and/or that they were safe and effective as agricultural herbicides.

131. The representations about Roundup[®], as set forth herein, contained or constituted affirmations of fact or promises made by the seller to the buyer, which related to the goods and became part of the basis of the bargain, creating an express warranty that the goods would conform to the representations.

132. Defendant placed its Roundup[®] products into the stream of commerce for sale and recommended their use to consumers and the public without adequately warning of the true risks of developing the injuries associated with the use of and exposure to Roundup[®] and its active ingredient glyphosate.

133. Defendant breached these warranties because, among other things, its Roundup[®] products were defective, dangerous, unfit for use, did not contain labels representing the true and adequate nature of the risks associated with their use, and were not merchantable or safe for their intended, ordinary, and foreseeable use and purpose. Specifically, Defendant breached the warranties in the following ways:

- a. Defendant represented through its labeling, advertising, and marketing materials that its Roundup[®] products were safe, and fraudulently withheld and concealed information about the risks of serious injury associated with use of and/or exposure to Roundup[®] and glyphosate by expressly limiting the risks associated with use and/or exposure within its warnings and labels; and
- b. Defendant represented that its Roundup[®] products were safe for use and fraudulently concealed information that demonstrated that glyphosate, the active ingredient in Roundup[®], had carcinogenic properties, and that its Roundup[®] products, therefore, were not safer than alternatives available on the market.

134. Upon information and belief, Plaintiff's employer was at all relevant times in privity with Defendant.

135. Plaintiff is the intended third-party beneficiaries of express warranties made by Defendant to the purchasers of its herbicides, including the company that employed Plaintiff, and as such Plaintiff is entitled to assert this claim.

136. On information and belief, Plaintiff's employer justifiably and detrimentally relied on the express warranties and representations of Defendant in the purchase and use of its

Roundup[®] products. When Plaintiff's employer made the decision to purchase Roundup[®], it reasonably relied upon Defendant to disclose known defects, risks, dangers, and side effects of Roundup[®] and glyphosate.

137. Defendant had sole access to material facts concerning the nature of the risks associated with its Roundup[®] products as expressly stated within its warnings and labels, and Defendant knew that consumers, and users such as Plaintiff, could not have reasonably discovered that the risks expressly included in Roundup[®] warnings and labels were inadequate and inaccurate.

138. Plaintiff's employer and Plaintiff had no knowledge of the falsity or incompleteness of Defendant's statements and representations concerning Roundup[®].

139. Plaintiff used and/or was exposed to the use of Roundup[®] as researched, developed, designed, tested, manufactured, inspected, labeled, distributed, packaged, marketed, promoted, sold, or otherwise released into the stream of commerce by Defendant.

140. Had the warnings and labels for Roundup[®] products accurately and adequately set forth the true risks associated with the use of such products, including Plaintiff's injuries, rather than expressly excluding such information and warranting that the products were safe for their intended use, Plaintiff could have avoided the injuries complained of herein.

141. As a direct and proximate result of Defendant's wrongful acts and omissions, Plaintiff has suffered severe and permanent physical and emotional injuries. Plaintiff has endured pain and suffering, has suffered economic losses (including significant expenses for medical care and treatment), and will continue to incur these expenses in the future.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,

attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

CLAIM FIVE

BREACH OF IMPLIED WARRANTIES

142. Plaintiff incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

143. At all times relevant to this litigation, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting its Roundup[®] products, which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing Roundup[®] products into the stream of commerce. These actions were under the ultimate control and supervision of Defendant.

144. Before the time that Plaintiff used and/or was exposed to the use of the aforementioned Roundup[®] products, Defendant impliedly warranted to its consumers—including Plaintiff's employer—that its Roundup[®] products were of merchantable quality and safe and fit for the use for which they were intended; specifically, as horticultural herbicides.

145. Defendant, however, failed to disclose that Roundup[®] has dangerous propensities when used as intended and that the use of and/or exposure to Roundup[®] and glyphosate-containing products carries an increased risk of developing severe injuries, including Plaintiff's injuries.

146. Upon information and belief, Plaintiff's employers reasonably relied upon the skill, superior knowledge and judgment of Defendant and upon its implied warranties that the Roundup[®] products were of merchantable quality and fit for their intended purpose or use.

147. Upon information and belief, Plaintiff's employer was at all relevant times in privity with Defendant.

148. Plaintiff is the intended third-party beneficiaries of implied warranties made by Defendant to the purchasers of its horticultural herbicides, including the company that employed Plaintiff, and as such Plaintiff is entitled to assert this claim.

149. The Roundup[®] products were expected to reach and did in fact reach consumers and users, including Plaintiff, without substantial change in the condition in which they were manufactured and sold by Defendant.

150. At all times relevant to this litigation, Defendant was aware that consumers and users of its products, including Plaintiff, would use Roundup[®] products as marketed by Defendant, which is to say that Plaintiff was a foreseeable user of Roundup[®].

151. Defendant intended that its Roundup[®] products be used in the manner in which Plaintiff in fact used them and Defendant impliedly warranted each product to be of merchantable quality, safe, and fit for this use, despite the fact that Roundup[®] was not adequately tested or researched.

152. In reliance upon Defendant's implied warranty, Plaintiff used Roundup[®] as instructed and labeled and in the foreseeable manner intended, recommended, promoted and marketed by Defendant.

153. Neither Plaintiff nor Plaintiff's employer could have reasonably discovered or known of the risks of serious injury associated with Roundup[®] or glyphosate.

154. Defendant breached its implied warranty to Plaintiff in that its Roundup[®] products were not of merchantable quality, safe, or fit for their intended use, or adequately tested.

Roundup[®] has dangerous propensities when used as intended and can cause serious injuries, including those injuries complained of herein.

155. The harm caused by Defendant's Roundup[®] products far outweighed their benefit, rendering the products more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

156. As a direct and proximate result of Defendant's wrongful acts and omissions Plaintiff has suffered severe and permanent physical and emotional injuries. Plaintiff has endured pain and suffering, have suffered economic loss (including significant expenses for medical care and treatment) and will continue to incur these expenses in the future.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in their favor and against Monsanto, awarding as follows:

- A. compensatory damages in an amount to be proven at trial;
- B. punitive damages;
- C. costs including reasonable attorneys' fees, court costs, and other litigation expenses; and
- D. any other relief the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all of the triable issues within this Complaint.

Dated: September 22, 2015
New York, New York

WEITZ & LUXENBERG, P.C.

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