

MERRIMACK, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT
217-2020-CV-00573

STATE OF NEW HAMPSHIRE

Plaintiff,

vs.

MONSANTO CO.,
SOLUTIA, INC., and
PHARMACIA LLC.

Defendants.

SETTLEMENT AGREEMENT

WHEREAS, the State of New Hampshire, by its Attorney General John M. Formella, filed its Complaint in this Action on October 27, 2020, in which the State asserted various claims against Defendant for alleged environmental impairments related to PCBs, including alleged impairments to water bodies, wildlife, and other natural resources;

WHEREAS, the parties have agreed to resolve this Action without the need for further litigation;

WHEREAS, Defendant, by entering into this Settlement Agreement, does not admit any allegations in the Complaint or to any wrongdoing, fault, violation of law, or liability of any kind on the part of any Defendant;

AND WHEREAS, it is the intention of the State in effecting this settlement to fully and finally resolve the State's claims against Defendant in this Action;

NOW, THEREFORE, the parties enter this Settlement Agreement to settle and compromise this Action and to discharge Defendant as set forth herein.

I. DEFINITIONS

1. As used in this Settlement Agreement, the following terms shall have the defined meanings set forth below.

2. “Action” means the case captioned *State of New Hampshire v. Monsanto Co., et al.*, Case No. 217-2020-CV-00573, filed in the Superior Court of Merrimack County, New Hampshire.

3. “Defendant” means Monsanto Company, Solutia, Inc., and Pharmacia LLC (the former Monsanto Company), including each and all, direct or indirect, predecessors, successors (including but not limited to successors by merger or acquisition), parents (including intermediate parents and ultimate parents, including Bayer AG, Pfizer Inc., and Eastman Chemical Company), subsidiaries, affiliated or related companies, divisions, partnerships, and joint ventures; and any officer, director, member, shareholder, employee, partner, trustee, representative, agent, servant, insurer, attorney, predecessor, successor, or assignee of any of the above.

4. “Effective Date” means the date on which the last party executes this Settlement Agreement.

5. “PCBs” means polychlorinated biphenyls.

6. “Plaintiff” or the “State” means the State of New Hampshire.

7. “Released Claims” means all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements, and causes of action of every nature and description whatsoever, existing now or arising in the future, known or unknown, suspected or unsuspected, both at law and at equity, including any claim for attorneys’ fees, expenses, and costs under local, state or federal law, which were or could have been alleged by the State related to Defendant’s manufacture, sale, testing, disposal, release, marketing or management of PCBs, regardless of the legal theory or type or nature of damages claimed or any other claim by the New Hampshire Office

of the Attorney General unless otherwise specified herein. "Released Claims" shall include claims of third parties, including but not limited to counties, municipalities, and districts, arising from or relating to PCBs to the extent that the State could have brought such claims but shall not include claims of such entities arising from alleged PCB contamination of buildings in which the State has or had no ownership or other interest.

8. "Released Persons" means Defendant and any Affiliate of Defendant, including but not limited to Bayer AG, Pfizer, Inc., and Eastman Chemical. "Affiliate" means each and all past, present, or future, direct or indirect, predecessors, successors (including but not limited to successors by merger or acquisition), parents (including intermediate parents and ultimate parents), subsidiaries, affiliated or related companies, divisions, partnerships, and joint ventures; and any past, present, or future officer, director, shareholder, employee, partner, trustee, representative, agent, servant, insurer, attorney, predecessor, successor, or assignee of any of the above.

9. "Releasing Persons" means the State of New Hampshire, and each of its officers acting in their official capacities, agencies, departments, boards, and commissions.

10. "Settlement Agreement" means this document which describes the parties' agreement to settle and compromise this Action.

11. "Settlement Funds" means the amount to be paid by Monsanto Company, on behalf of the entities described in Paragraphs 3 and 8, to the State pursuant to Section II, below.

II. PAYMENT OF THE SETTLEMENT FUNDS

12. Monsanto Company, on behalf of the entities described in Paragraphs 3 and 8, shall pay or cause to be paid to the State the sum of twenty-five million dollars (\$25,000,000.00).

13. Payment of the Settlement Funds shall be made by electronic funds transfer within sixty (60) days of the Effective Date.

14. The Settlement Funds shall be paid into an interest-bearing escrow account as

specified by the State. After Monsanto Company has made the required payment, Defendant shall no longer have any property right, title, interest, or other legal claim in any funds held in escrow.

III. RELEASES AND COVENANT NOT TO SUE

15. In exchange for the payment of the Settlement Funds, the Releasing Persons fully and finally release and discharge the Released Persons, and each of them, from the Released Claims.

16. Additionally, the Releasing Persons covenant not to sue or take any other civil or administrative action against any Released Person for any Released Claim.

17. The Released Persons are entitled to protection from contribution and/or indemnity claims asserted against them by any person or persons who are not parties to this Settlement Agreement to the fullest extent provided under any provision of applicable federal, state, or local law, including but not limited to CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), and N.H. Rev. Stat. § 507:7-h, for the matters addressed in this Settlement Agreement and for all Released Claims.

18. Notwithstanding the foregoing releases, or any other term of this Settlement Agreement, the State specifically reserves and does not release the following claims: 1) any criminal, civil, or administrative liability arising under the State's revenue code; or 2) any criminal liability.

19. The parties agree and acknowledge that the amount of the Settlement Funds is reasonable as of the Effective Date and this settlement was entered into in good faith.

IV. DISMISSAL

20. No later than ten (10) days following the State's receipt of the Settlement Funds, the parties shall file with the Court a joint stipulation of voluntary dismissal with prejudice of the Action.

V. OTHER TERMS

21. In the event that this Settlement Agreement does not become effective for any reason, this Settlement Agreement shall become null and void and of no further effect and any negotiations, statements, communications, proceedings, and pleadings relating thereto, and the fact that the parties agreed to settle and compromise this Action, shall be without prejudice to the rights of the State or Defendant, shall not be used for any purpose whatsoever in any subsequent proceeding in this Action or in any other action in any court or tribunal, and shall not be construed as an admission or concession by any party of any fact, matter, or allegation.

22. Each party will bear its own costs and attorneys' fees associated with the Action.

23. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), payment of the Settlement Funds pursuant to Section II above is restitution. The State agrees to file any returns required by the Internal Revenue Service or other tax authorities reporting on payment of the Settlement Funds consistent with this Paragraph 23.

24. This Settlement Agreement may be amended or modified only by written agreement of the Parties.

25. This Settlement Agreement shall be governed by the laws of the State of New Hampshire, without regard to conflict of law principles.

IN WITNESS THEREOF, the parties have executed this Settlement Agreement as of the date set forth below.

For the State of New Hampshire:

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By: SAB


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For Monsanto Company, Pharmacia LLC, and Solutia, Inc.:

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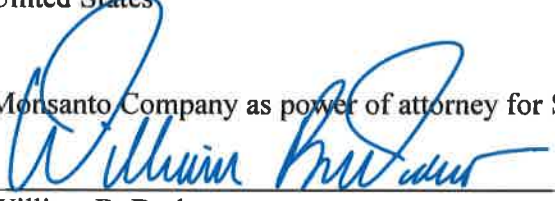
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