PCBs/Academic Building: Wolfpack (North Carolina State University) Judicial Action Against Manufacturer's Alleged Successors



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The North Carolina State University ("NC State") filed on October 1st a Complaint in the North Carolina General Court of Justice - Superior Court Division against Monsanto Company ("Monsanto") and Pharmacia LLC ("Pharmacia"). See 25CV034830-910.

The Complaint seeks and equitable and declaratory relief against both companies for polychlorinated biphenyl ("PCB") contamination.

NC State alleges that PCB contamination has rendered an academic building known as Poe Hall:

- Unfit for occupancy.
- Requiring extensive remediation and abatement.
- Requiring replacement construction.

Monsanto and Pharmacia are described in the Complaint as liable as successors to a prior Monsanto entity that manufactured, marketed, and sold virtually all PCBs used in the United States. Such sold PCBs are alleged to be PCBs detected in Poe Hall.

The Complaint states that PCBs were manufactured in the United States by the prior Monsanto Company from 1935 to 1977 for industrial commercial applications due to their non-flammability, chemical stability, plasticizing properties, and electrical insulation characteristics. Further, it states that common building materials containing PCBs used in structures built or renovated between roughly 1950 and 1979 included:

- Caulks.
- Paints.
- Mastics and other adhesives.
- Fireproofing materials.
- Certain ceiling tiles.
- Acoustic boards.
- Fluorescent light ballasts.

PCB leaching occurs over time. This is alleged to occur particularly when PCB mixtures are used as plasticizers in construction materials that are applied to or near porous surfaces, such as masonry, wood, and concrete. It is further stated:

…As PCBs escape from caulking, adhesives, mastics, varnishes, waxes, rubbers, paints, and similar materials, they can leach into other materials in contact with them.

Poe Hall is stated to have been constructed in 1971, during a period in which PCBs were commonly incorporated into some of the referenced building materials. Such PCBs are stated to have:

...escaped their original applications, slowly and over time, to cause contamination of other materials and indoor air during their ordinary and prescribed uses.

The Complaint further describes NC State's investigation of Poe Hall and decision to close the structure in 2023. It further reviews the preparation of a remediation plan submitted to the United States Environmental Protection Agency ("EPA") and analytical results from environmental investigations. Also described are access agreements that are stated to have been provided to representatives of the Defendants and certain law firms representing prior occupants of the building to inspect and sample the structure.

The following causes of action are alleged:

- Public Nuisance.
- Private Nuisance.
- Inadequate Design (N.C.G.S. § 99B-6).
- Failure to Warn (N.C.G.S. § 99B-5).
- Negligence.
- Trespass.
- Unfair and Deceptive Trade Practices (N.C.G.S. § 75-1.1).
- Fraud and Misrepresentation.
- Negligent Misrepresentation.
- Oil Pollution and Hazardous Substances Control Act (N.C.G.S. § 143-215.75 et seq.).
- Implied Indemnity, Restitution/Equitable Subrogation, and Declaratory Judgment Regarding Workers' Compensation and Related Exposure Claims.
- Declaratory Judgment Regarding Toxic Substances Control Act Compliance and Remediation Cost Responsibility.

A copy of the Complaint can be downloaded here.