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 16 ***City of Seattle***

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18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA
 20 WESTERN DIVISION

21 CITY OF LONG BEACH a municipal
 22 corporation; et al.,

23 Plaintiffs,

24 v.

25 MONSANTO COMPANY SOLUTIA
 INC., et al.,

26 Defendants.

No. 2:16-cv-03493-FMO-AS

**INITIAL SETTLEMENT CLASS
 MEMBER CITY OF SEATTLE'S
 OBJECTION TO MOTION FOR
 PRELIMINARY APPROVAL
 REGARDING RELEASE AND
 CONTRIBUTION**

Date: September 17, 2020
 Time: 10:00 am
 Judge: Fernando M. Olguin
 Crtrm: 6D

Action Filed: May 19, 2016
Trial Date: May 11, 2021

ORAL ARGUMENT REQUESTED

I. RELIEF REQUESTED

The City of Seattle (the “City”) asks the Court to deny preliminary approval of the proposed Settlement or to amend the settlement language. The definition of Released Claims in paragraph 41 of the proposed Settlement, in combination with the contribution protection provision in paragraph 106, impairs the City of Seattle’s rights and the rights of untold numbers of other persons. The Settlement should be amended before notice goes to class members to allow class members to evaluate their options in light of the amended language. If the Court grants oral argument on the Motion for Preliminary Approval, then the City asks for oral argument on its objection.

II. PRE-FILING CONFERENCE¹

Counsel for the City of Seattle contacted Class Counsel, Scott Summy, to discuss the City’s concerns. Mr. Summy indicated that the plaintiffs would not consider amending the problematic provisions. The City’s counsel attempted to reach counsel for Monsanto by phone and, when that was unsuccessful, exchanged letters with counsel for

¹ The City is unsure whether a pre-filing conference was required given that the City is objecting to a pending motion, not bringing a new motion. The City nonetheless did its best to confer with counsel for the parties prior to this filing.

1 Monsanto regarding the provisions. The City asked for clarification that the contribution
 2 protection provision would not bar the City's current or future claims. Counsel for
 3 Monsanto replied, "[Y]ou request a legal opinion as to the potential application of
 4 contribution protection language in Paragraph 106 of the Settlement Agreement to claims
 5 the City of Seattle asserts or might assert in the future. We cannot offer legal opinions as
 6 to the application of fact and law." Wishik Dec., Attachment A. Before filing this
 7 objection, the City reached counsel for Monsanto by phone but was unable to resolve the
 8 issues before the deadline for filing this objection. The City had no option left but to
 9 petition the Court for relief. Wishik Dec., ¶¶ 13 - 14.

13 III. FACTS

14 The City of Seattle sued Monsanto in 2016.² The City's primary claim is that
 15 Monsanto created a public nuisance in the City's drainage system and the receiving water
 16 body, the Lower Duwamish Waterway, by producing and marketing PCBs for products
 17 such as exterior paint and caulk that release PCBs during normal use. Wishik Dec., ¶ 2.
 18 As a result, people who rely on fishing and collecting shellfish from the Lower
 19 Duwamish for food, including immigrants and low-income persons, have been warned
 20 not to eat any resident seafood from the Lower Duwamish due to PCBs. *Id.*, ¶ 3.
 21
 22
 23
 24

25 ² *City of Seattle v. Monsanto Company, et al.*, 2:16-CV-00107-RSL (WD WA).

1 Although the Plaintiffs and Defendants argue that the amount of the proposed Settlement
2 is adequate, in part, because PCBs are not the only contaminant in receiving water
3 bodies, in Seattle, PCBs are the sole chemical that makes resident seafood inedible.
4 PCBs are also the only chemical that EPA has identified as being a site-wide contaminant
5 that requires reduction to a site-wide average concentration. For these and other reasons,
6 PCBs are “the driver” of remediation in the City’s Lower Duwamish Waterway. *Id.*, ¶ 5.
7

8
9 The City already has incurred millions of dollars to abate the nuisance created by
10 Monsanto’s PCBs. The City’s trial experts are continuing to calculate future costs to
11 abate the nuisance, but it appears those costs will be more than \$600 million. *Id.*, ¶ 4.
12

13 The City considers the proposed Settlement to be a gift to Monsanto and its new
14 parent company, Bayer. The Settlement would allow them to close the books on
15 enormous liability arising from Monsanto’s production and sale of PCBs. The proposed
16 settlement, in the City’s view, is a Trojan Horse for many of the class members,
17 providing them a pittance to monitor their stormwater for PCBs and blocking them from
18 getting funds they will need if PCBs are found.
19
20

21 The City was in the group of Litigating Entities until it became apparent that
22 Monsanto would not settle for an amount of money commensurate with its liability.
23 Indeed, the total amount of the proposed class settlement is less than Monsanto’s
24 exposure in just the City’s case. The City plans to opt out of the class and continue with
25

1 its separate action against Monsanto. Once the City opts out, the City will not be able to
2 object to the Settlement, even though the Settlement as it stands potentially impairs the
3 City's rights. This is the only opportunity for the City to get relief.
4

5 In addition to the City's lawsuit against Monsanto, the City is currently
6 participating in an alternative dispute resolution process with multiple parties to resolve
7 their respective liability under CERCLA³ and the equivalent Washington statute, the
8 Model Toxics Control Act (MTCA),⁴ for contamination in the Lower Duwamish
9 Waterway. That process is known as the Duwamish Allocation. *Id.*, ¶ 9. Two members of
10 the proposed class action, King County and the Port of Seattle, are participating in the
11 Duwamish Allocation. One of the Monsanto defendants, Pharmacia, is also participating.
12 Pharmacia is participating due to its former ownership of a plant adjacent to the Lower
13 Duwamish that allegedly released PCBs in the course of manufacturing other products.
14 *Id.*, ¶ 10. The Duwamish Allocation has been ongoing since 2014 and is expected to be
15 completed in 2021. *Id.*, ¶ 11.
16
17
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20 The City of Seattle, King County and the Port of Seattle signed an EPA
21 Administrative Order in 2000 to investigate contamination in the Lower Duwamish.
22
23

24 ³ Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC. §
25 9601, *et seq.*

26 ⁴ RCW 70.105D.010, *et seq.*

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