



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARK MEAD

Plaintiff

- and -

**3M COMPANY, 3M CANADA COMPANY, E.I. DUPONT DE NEMOURS AND
COMPANY d.b.a. EIDP, INC., DUPONT CHEMICAL SOLUTIONS
ENTERPRISE, E.I. DUPONT CANADA – THETFORD INC., THE CHEMOURS
COMPANY, THE CHEMOURS COMPANY FC, LLC, THE CHEMOURS
COMPANY CANADA, TYCO FIRE PRODUCTS L.P., BASF SE, BASF
CORPORATION and BASF CANADA INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE

TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: August 26, 2024

Issued by

[Handwritten signature]
Local registrar

Address of court office

~~393 University Ave, 10th Floor Toronto, Ontario M5G 1E6~~ *[Handwritten initials]*

TO: 3M COMPANY
3M CENTER
ST. PAUL, MN 55144-1000
USA

SUPERIOR COURT
OF JUSTICE
330 UNIVERSITY AVE.
8TH FLOOR
TORONTO, ONTARIO
M5G 1R7

COUR SUPÉRIEURE
DE JUSTICE
330, AVE. UNIVERSITY
8E ÉTAGE
TORONTO, ONTARIO
M5G 1R7

AND TO: 3M CANADA COMPANY
600-1741 LOWER WATER ST.
HALIFAX, NS B3J 0J2
CANADA

AND TO: E.I. DUPONT DE NEMOURS AND COMPANY D.B.A. EIDP, INC.
CORPORATION TRUST CENTER
1209 ORANGE ST.
WILMINGTON, DE 19801
USA

AND TO: DUPONT CHEMICAL SOLUTIONS ENTERPRISE
CORPORATION TRUST CENTER
1209 ORANGE ST.
WILMINGTON, DE 19801
USA

AND TO: E.I. DUPONT CANADA – THETFORD INC.
4069 POWDERHORN CRES.
MISSISSAUGA, ON L5L 3B6

AND TO: THE CHEMOURS COMPANY CANADA
1300-1969 UPPER WATER ST.

PURDY'S WHARF, TOWER II
HALIFAX, NS B3J 2V1

AND TO: THE CHEMOURS COMPANY FC, LLC
CORPORATION TRUST CENTER
1209 ORANGE ST.
WILMINGTON, DE 19801
USA

AND TO: THE CHEMOURS COMPANY
CORPORATION TRUST CENTER
1209 ORANGE ST.
WILMINGTON, DE 19801
USA

AND TO: TYCO FIRE PRODUCTS L.P.
4400-181 BAY ST.
TORONTO, ON M5J 2T3

AND TO: BASF SE
CARL-BOSCH-STR 38 67056
LUDWIGSHAFEN AM RHEIN
RHEINLAND-PFALZ GERMANY

AND TO: BASF CORPORATION
CORPORATION TRUST CENTER
1209 ORANGE ST.
WILMINGTON, DE 19801
USA

AND TO: BASF CANADA INC.
5025 CREEKBANK RD.
BUILDING A, FLOOR 2
MISSISSAUGA, ON L4W 0B6

CLAIM

1. The Plaintiff claims on his own behalf, and on behalf of the Class described herein:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as representative Plaintiff for the Class Members;
 - (b) a declaration that the Defendants were negligent in the design, manufacture, testing, distribution, sale, use and marketing of PFAS;
 - (c) a declaration that the Defendants committed the tort of private nuisance;
 - (d) a declaration that the Defendants committed the tort of public nuisance;
 - (e) a declaration that the Defendants committed the tort of civil conspiracy;
 - (f) a declaration that the Defendants breached their duty to warn of the risk of harm caused by PFAS;
 - (g) a declaration that the Defendants are variously liable for the acts and omissions of their officers, directors, agents, employees and representatives;
 - (h) a declaration that the Defendants engaged in conduct contrary to section 52 of the *Competition Act*, R.S.C. 1985, c. C-35;
 - (i) a declaration that the Defendants engaged in conduct contrary to section 99(2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, and the analogous provisions in other provincial environmental protection legislation;
 - (j) pecuniary damages, including in respect of the following:
 - (i) costs to investigate, sample, test, and assess PFAS contamination in the well water on the Class Members' properties;

- (ii) costs to install and maintain treatment and remediation systems to address PFAS contamination in the well water on the Class Members' properties;
 - (iii) costs to install and maintain monitoring systems to assess and evaluate PFAS contamination in the well water on the Class Members' properties;
 - (iv) costs to provide alternative water supply to the Class Members' properties in the interim until remediation can be completed; and
 - (v) other costs or consequential damages arising from the PFAS contamination caused by the Defendants.
- (k) punitive damages;
 - (l) damages under section 36 of the *Competition Act* for loss or damage suffered as a result of conduct contrary to section 52 of the same;
 - (m) damages under section 99(2) of the *Environmental Protection Act* for loss or damage suffered as a result of the spill of a pollutant that causes or is likely to cause an adverse effect;
 - (n) the costs of distributing all monies received to Class Members;
 - (o) pre-judgment and post-judgment interest;
 - (p) costs on a substantial indemnity basis, plus applicable taxes; and
 - (q) such further and other relief as this Honourable Court may deem just.

A. DEFINITIONS

2. Capitalized terms used in this Statement of Claim have the meanings indicated below:

- (a) "**Class**" and "**Class Members**" means:

All persons in Canada, save for excluded persons, who currently own property with a well, and whose well water contains PFAS;

- (b) "**Excluded Persons**" means the Defendants, or any officer or director of the Defendants;
- (c) "**Defendants**" means, collectively, 3M Company, 3M Canada Company, E.I. DuPont De Nemours and Company d.b.a. EIDP, Inc., DuPont Chemical Solutions Enterprise, E.I. DuPont Canada — Thetford Inc., The Chemours Company, The Chemours Company FC LLC, The Chemours Company Canada, Tyco Fire Products LP, BASF SE, BASF Corporation, and BASF Canada Inc.;
- (d) "**PFAS**" means per- and poly-fluoroalkylated substances, the class of human-made chemicals that have multiple fluorine atoms attached to a carbon chain, and include, but are not limited to, perfluorooctane sulfonate ("**PFOS**") and perfluorooctanic acid ("**PFOA**").

B. NATURE OF THE ACTION

3. At various times since the 1940s, the Defendants manufactured, distributed, sold, applied and/or used PFAS, alone or in products manufactured with or containing PFAS, across North America.

4. Despite knowing of the risks of PFAS to human health, the Defendants continued to manufacture, distribute, sell, apply and/or use PFAS. At all material times, the Defendants were aware that PFAS would be manufactured, applied and/or used and that as a result PFAS would enter the environment, migrate into groundwater, and ultimately contaminate the drinking water used at the Plaintiff's and Class Members' properties. At all material times, the Defendants were aware that PFAS contamination posed a risk to human health.

5. The Defendants refused to warn consumers and the public about the risk of PFAS to human health. On the contrary, the Defendants undertook a concerted effort to

undermine, manipulate, discredit, suppress and delay the scientific discourse on the risk of PFAS to human health.

6. The Defendants' manufacture, sale, application and/or use of PFAS resulted in material damage to the well water on the Plaintiff's and Class Members' properties. The Defendants' conduct posed actual harm or the risk of actual harm to the Plaintiff's and Class Members' health and interfered with the right of millions of Canadians to safe drinking water on their properties. The PFAS contamination in the Class Members' wells is measurable through established scientific techniques and is readily ascertainable as PFAS manufactured by the Defendants.

7. The Defendants are liable in negligence, private nuisance, public nuisance, conspiracy, and breaches of the *Competition Act* to the Plaintiff and Class Members, whose wells were contaminated by PFAS.

8. The plaintiff and the Class do not seek recovery of damages in this proceeding for the personal injuries they have suffered as a result of exposure to PFAS, nor do they waive such claims, which are the subject of another proceeding.

C. THE PLAINTIFF

9. The Plaintiff, Mark Mead, resides in Toronto, Ontario. The Plaintiff owns a recreational property in Hastings County, Ontario (the "Subject Property"). There is a well sited on the Subject Property. The well on the Subject Property provides water for drinking, bathing, and other household uses.

10. The Plaintiff states and the fact is that PFAS is ubiquitous in Canadian groundwater and surface water. The Plaintiff state, and the fact is that the water in most wells in Canada contains PFAS.

D. THE DEFENDANTS

11. At all relevant times, the Defendants designed, manufactured, distributed, sold, applied and/or used PFAS, or products containing PFAS. At all material times, the

Defendants substantially controlled the market for PFAS, and products containing PFAS, in North America.

12. When a particular entity within a corporate family of the Defendants engaged in the unlawful conduct alleged in this Claim, it did so on behalf of all entities within that corporate family.

13. As described in further detail at paragraphs 83 through 88 below, the Defendants conspired with each other, acting in concert, or substantially assisted each other in performing acts and omissions that furthered a common design to design, manufacture, distribute, sell, apply and/or use PFAS, and their products containing PFAS, despite knowing that it could result in injury and/or damage to the Plaintiff and Class Members.

14. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as Defendants in this Claim, the identities of which are presently unknown, have participated in the conduct alleged herein, and have performed acts and omissions for which the Defendants are vicariously liable. Any such entity, whether named as a Defendant or unknown, is referred herein as a "**co-conspirator.**"

15. The Defendants and their co-conspirators are jointly and severally liable for the acts and omissions of each other, and for the damages caused by their tortious conduct.

3M Defendants

16. The Defendant 3M Company ("**3M**") and the Defendant 3M Canada Company ("**3M Canada**") are, collectively, the "**3M Defendants.**"

17. 3M is a Delaware corporation with its headquarters and principal place of business in St. Paul, Minnesota. At all material times, 3M Canada was a wholly owned subsidiary of 3M. At all material times, 3M exercised complete control over 3M Canada. At all material times, 3M Canada was liable for the acts and omissions of 3M. At all material times, 3M manufactured, distributed, sold, applied, and/or used PFAS or products containing PFAS in the United States and Canada.

18. 3M Canada is a Canadian company with its registered office in London, Ontario. It is a wholly owned subsidiary of 3M. At all material times, 3M Canada manufactured, distributed, sold, applied, and/or used PFAS or products containing PFAS in Canada.

19. At all relevant times, the 3M Defendants developed, designed, manufactured, distributed, sold, applied and/or used PFAS and products containing PFAS. This occurred directly or indirectly, through agents, subsidiaries, affiliates, representatives, or predecessors.

20. The businesses of each of the 3M Defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, distribution, sale, marketing, application, and/or use of PFAS. At all material times, the 3M Defendants acted pursuant to a common design to design, manufacture, distribute, sell, apply and/or use PFAS and products containing PFAS. Each of the 3M Defendants is jointly and severally liable for the acts and omissions of the other.

DuPont Defendants

21. The Defendant E.I. DuPont de Nemours & Company ("**DuPont**"), the Defendant DuPont Chemical Solutions Enterprise ("**DuPont Chemical**"), the Defendant E.I. DuPont Canada – Thetford Inc. ("**DuPont Canada**"), the Defendant The Chemours Company ("**Chemours**"), the Defendant The Chemours Company FC, LLC ("**Chemours FC**"), and the Defendant The Chemours Canada Company ("**Chemours Canada**") are, collectively, the "**DuPont Defendants.**"

22. DuPont is a Delaware corporation with its principal place of business in Wilmington, Delaware. DuPont is a successor in interest to DuPont Chemical, a Delaware corporation with its principal place of business in Wilmington, Delaware.

23. DuPont Canada is a Canadian company, with a registered office in Thetford Mines, Québec.

24. In 2015, Chemours took on DuPont's "performance chemicals" business, including those related to PFAS. Chemours is a Delaware corporation with its principal place of

business in Wilmington, Delaware. Chemours FC is a successor in interest to DuPont Chemical and operates as a subsidiary of Chemours.

25. Chemours Canada is a Canadian company, with a registered office in Vancouver, British Columbia.

26. At all relevant times, the DuPont Defendants developed, designed, manufactured, distributed, sold, applied, and/or used PFAS, and products containing PFAS. This occurred directly or indirectly, through agents, subsidiaries, affiliates, representatives, or predecessors.

27. The businesses of each of the DuPont Defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, distribution, sale, marketing, application, and/or use of PFAS. At all material times, the DuPont Defendants acted pursuant to a common design to design, manufacture, distribute, sell, apply and/or use PFAS and products containing PFAS. Each of the DuPont Defendants is jointly and severally liable for the acts and omissions of the other.

Tyco Defendants

28. The Defendant Tyco Fire Products L.P. ("**Tyco**") and all of its related and predecessor corporations, including The Ansul Company ("**Ansul**") and Chemguard Inc. ("**Chemguard**"), are, collectively, the "**Tyco Defendants**."

29. Tyco is a Delaware limited partnership with its principal place of business in Marinette, Wisconsin.

30. In 1999, Tyco acquired Ansul and its brand of products containing PFAS. Tyco is the successor in interest of Ansul.

31. In 2011, Tyco acquired Chemguard and its brand of products containing PFAS. Chemguard.

32. At all relevant times, the Tyco Defendants developed, designed, manufactured, formulated, distributed, and sold products containing PFAS, including a fire suppressant

product known as Aqueous Film Forming Foam ("**AFFF**"). This occurred directly or indirectly, through agents, subsidiaries, affiliates, representatives, or predecessors.

33. The businesses of each of the Tyco Defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, distribution, sale, marketing, application, and/or use of PFAS. At all material times, the Tyco Defendants acted pursuant to a common design to design, manufacture, distribute, sell, apply, and/or use PFAS and products containing PFAS. Each of the Tyco Defendants is jointly and severally liable for the acts and omissions of the other.

BASF Defendants

34. The Defendant BASF SE ("**BASF SE**"), the Defendant BASF Canada Inc. ("**BASF Canada**"), and the Defendant BASF Corporation ("**BASF**") are, collectively, the "**BASF Defendants**."

35. BASF SE is a German corporation that conducts business worldwide, including in Canada, with its principal place of business in Ludwigshafen, Germany.

36. BASF is a Delaware corporation with its principal place of business in Florham Park, New Jersey. In 2009, BASF acquired Ciba Inc. ("**Ciba**") and retained all its liabilities. BASF is the successor in interest to Ciba.

37. BASF Canada is a Canadian company with its registered office in Mississauga, Ontario. BASF Canada is a subsidiary of BASF SE and an affiliate of BASF.

38. Ciba designed, manufactured, distributed, and sold products containing PFAS to manufacturers of AFFF, including the Tyco Defendants. For a period presently unknown to the Plaintiff, Ciba had an agreement to serve as the exclusive provider of products containing PFAS to Ansul.

39. At all relevant times, the BASF Defendants developed, designed, manufactured, distributed, sold, applied and/or used PFAS and products containing PFAS. This occurred directly or indirectly, through agents, subsidiaries, affiliates, representatives, or predecessors.

40. The businesses of each of the BASF Defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, distribution, sale, marketing, application and/or use of PFAS. At all material times, the BASF Defendants acted pursuant to a common design to design, manufacture, distribute, sell, apply, and/or use PFAS and products containing PFAS. Each of the BASF Defendants is jointly and severally liable for the acts and omissions of the other.

E. THE FACTS

The Contaminant: PFAS

41. PFAS are a family of synthetic chemical compounds. They are entirely human-made substances that do not occur naturally in the environment. PFAS exist in a wide range of everyday products, such as food packaging, non-stick cookware, clothing, and cosmetics. PFAS are also used in common industrial products and applications, such as lubricants, oil repellants, and the common fire suppressant known as AFFF.

42. PFAS are a highly stable compound, making them extremely resistant to degradation and difficult to break down. When applied, used, and/or disposed of as directed or intended, PFAS enters the environment and migrates through surfaces, soil, sediment, and groundwater, eventually travelling into and contaminating the drinking water sources relied on by millions of Canadians. Human exposure to or ingestion of PFAS results in accumulation of PFAS in the body over time.

43. Many Canadians rely on provincial and territorial governments, municipalities, regional districts and other governance authorities ("**Public Water Utilities**") for the provision of their drinking water.

44. However, millions of Canadians also rely on drinking water from private wells, which supply water that is not treated by Public Water Utilities. Due to the migration of PFAS, which was foreseen or reasonably foreseeable by the Defendants, the water contained in the Plaintiff's and Class Members' wells has been widely contaminated by PFAS.

The Risks of PFAS to Human Health

45. Exposure to, and ingestion of, PFAS poses a risk to human health. There is no safe exposure level to PFAS.

46. The prevalence of PFAS in human bodies is commonly measured through blood, which can reflect cumulative exposure to PFAS over several years. Health Canada synthesized data collected from the Canadian Health Measuring Survey and found PFAS to be present in the blood in more than 98% of the Canadian population.

47. Exposure to and ingestion of PFAS is dangerous. Health Canada has stated that multiple PFAS exhibit several of the key characteristics of carcinogens. Exposure to and ingestion of PFAS is linked to various health issues in multiple human systems and organs, including the liver, immune system, endocrine system, fertility, development, and metabolism.

48. The United States ("US") Environmental Protection Agency ("EPA") has warned that PFAS are likely carcinogens and that there is no level of PFAS contamination that is without a risk of adverse health effects. The International Agency for Research on Cancer ("IARC") has also evaluated PFOA and PFOS, two common PFAS, as carcinogenic to humans and possibly carcinogenic to humans, respectively.

The Defendants' Manufacture, Distribution, Sale, Application, and/or Use of PFAS

49. The Defendants began manufacturing PFAS in the 1940s. In 1950, the 3M Defendants acquired the patent rights to the electrochemical fluorination ("ECF") process. The 3M Defendants used the ECF technology to develop PFAS and products containing PFAS. The 3M Defendants subsequently received patents for specific PFAS compounds, including PFOA and PFOS, throughout the 1950s and 1960s.

50. In 1951, the DuPont Defendants began purchasing PFAS and/or components of PFAS from the 3M Defendants, for use in their own manufacturing processes and in the design, manufacture, and development of products containing PFAS.

51. In 1962, 3M researchers met with the US Naval Research Laboratories regarding the development of a fire-fighting foam that could more effectively prevent, suppress, and extinguish fires. In 1964, the 3M Defendants began selling their AFFF formulation to military and commercial markets. The 3M Defendants established pricing of their AFFF formulation to the Tyco Defendants.

52. In the 1970s, the BASF Defendants began supplying products containing PFAS to manufacturers for use in AFFF products in Canada.

53. In 2000, the 3M Defendants announced that they would be phasing out of the production of PFAS in the United States. The DuPont Defendants, having relied on the 3M Defendants as their supplier of PFOA, began manufacturing their own PFAS for use in their products containing PFAS and for sale to other manufacturers of PFAS, in or around the early 2000s.

54. At all material times, the 3M, Tyco, and BASF Defendants, designed, manufactured, distributed, sold, supplied, applied, and/or used AFFF products. At all material times, the Defendants designed, manufactured, distributed, sold, supplied, and/or used PFAS and products containing PFAS. At all material times, the Defendants were sophisticated and knowledgeable in science and research of PFAS and products containing PFAS and, as described further below, withheld material information regarding the risks from Class Members and the general public.

The Defendants' Knowledge of the Risks of PFAS

55. The Defendants have been aware of the risks of PFAS to human health as early as the 1950s. While toxicity of PFAS was not revealed by any of the Defendants until the 1990s, the Defendants knew approximately forty years earlier that human exposure to and ingestion of PFAS was toxic.

56. At all material times, the Defendants knew or ought to have known that PFAS and products containing PFAS, of which they were the leading contributors, were dangerous to human health. They knew, or ought to have known, that PFAS would:

- (a) release into the environment;
- (b) resist degradation and persist in the environment perpetually;
- (c) permeate and migrate through soil, sediment, and contaminate water sources providing drinking water to human populations;
- (d) bioaccumulate in living organisms, including in human bodies; and
- (e) result in adverse health effects in animals and humans.

57. The 3M and DuPont Defendants were aware of the risks of PFAS and products containing PFAS as early as the 1950s. At all material times, the 3M and Dupont Defendants conducted numerous studies investigating the impacts of PFAS on animal and human health. Their findings included, but are not limited to, the following:

- (a) in 1950, 3M conducted a study on mice that revealed that PFAS had the ability to bioaccumulate in blood;
- (b) in 1970, the Dupont Defendants conducted tests revealing that PFAS, which were used in their Teflon product, were highly toxic when inhaled;
- (c) in 1975, a 3M scientist concluded that fluorine compound discovered in the blood samples of residents "resembled most closely" to PFOS, a kind of PFAS manufactured only by 3M;
- (d) in 1976, the 3M Defendants' conducted blood sample tests on 3M laboratory personnel, revealing fluorine compounds in their blood at 100 times to 1,000 times normal; and
- (e) in 1979, the 3M Defendants concluded several toxicological studies on the effects of PFOS on rats, mice, and monkeys and found that it was more toxic than anticipated.

58. The Defendants conducted numerous other studies investigating the impact of PFAS on animal and human health. Many of these studies revealed relevant evidence

about the significant adverse effects of exposure to and ingestion of PFAS. At all material times, the Defendants conducted their own, and/or were aware of, scientific studies showing that PFAS and products containing PFAS could pose a danger to human health.

59. In 1998, invoking disclosure obligations under section 8(e) of the US *Toxic Substances Control Act*, the 3M Defendants reported the widespread presence of PFOS in the blood of the general US population. This disclosure came decades after the Defendants became aware of the risk of PFAS to human health.

60. Despite this knowledge, the Defendants obstructed, hid, delayed, and/or withheld information regarding the risks of PFAS to human health, and the risks of PFAS contamination in drinking water, from the general public, including the Class Members. Instead, the Defendants continued to manufacture, distribute, sell, supply, and/or use PFAS and products containing PFAS, resulting in widespread PFAS contamination, including in the well water on the Class Members' properties.

61. In the early 2000s, the DuPont and Tyco Defendants formed a group called the Fire Fighting Foam Coalition ("FFFC") to advocate for the continued use of AFFF, which contained PFAS. They did so despite knowing of the risks of AFFF as a product containing PFAS and its contribution to widespread PFAS contamination in the environment. Despite this knowledge, the FFFC obstructed the scientific studies revealing the adverse effects of AFFF and provided information regarding AFFF that was misleading, deceptive, or contrary to their knowledge of the harms of PFAS and products containing PFAS, including AFFF.

The Defendants' Common Design

62. Collectively, at all material times, the Defendants pursued a common design to design, manufacture, distribute, sell, apply, and/or use PFAS, and their products containing PFAS, despite knowing, or having ought to have known, of the risks of PFAS contamination and the risks of PFAS to human health.

63. Each Defendant was the agent, servant, employee, partner, alter ego, aider and abettor, co-conspirator, and/or joint venturer of each of the other Defendants. The Defendants, together, acted within the purpose and scope of this common enterprise.

64. Each Defendant ratified and approved the acts of each of the other Defendants. Each Defendant acted in concert, or substantially assisted each other, in performing acts and omissions that furthered their common design to obstruct, hide, delay, and/or withhold the true risks of PFAS to maximize their profits, thereby causing widespread PFAS contamination at the expense of human health. Each Defendant had this shared incentive to maximize profits from PFAS and/or products containing PFAS.

65. The Defendants are jointly and severally liable for the acts and omissions of each other, and for the damages caused by their tortious conduct.

F. CAUSES OF ACTION

Private Nuisance

66. At all material times, the Defendants' conduct, resulting in PFAS contamination in the well water on the Class Members' properties, amounted to substantial interference with the Class Members' use and enjoyment of their properties.

67. The PFAS contamination poses a realistic risk of actual harm to the health and well-being of the Plaintiff and Class Members.

68. The contamination of the well water on the Class Members' properties is readily ascertainable and can be reliably measured using established scientific techniques and attributed to the Defendants' PFAS.

69. By directly and/or indirectly causing unreasonable physical injury to the Plaintiff's and Class Members' wells, which supply water to the Plaintiff's and Class Members' properties, the Defendants substantially and unreasonably interfered with the use and enjoyment of the Class Members' properties and committed the tort of private nuisance.

Public Nuisance

70. At all material times, the Defendants' conduct, resulting in PFAS contamination in the Plaintiff's and Class Members' wells, amounted to a substantial and unreasonable interference with the right to clean water, which is a right common to all members of the Class. The Defendants' conduct amounts to an unreasonable interference upon the interests of the general public, including the millions of Canadians who rely on drinking water that is not treated and distributed by Public Water Utilities, engaging questions of health, safety, comfort, and convenience.

71. At all material times, the Defendants' conduct, resulting in PFAS contamination of the Plaintiff's and Class Members' wells, caused special damage to the Plaintiff and Class Members beyond that suffered by the public. The PFAS contamination caused by the Defendants results in damage to the Class Members' property values and has caused them to incur substantial remediation costs.

72. By substantially and unreasonably interfering with the public right to clean water, and causing special damage to the Plaintiff and Class Members in damage to the use of their properties, the Defendants committed the tort of public nuisance.

Negligence (Negligent Design)

73. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members to:

- (a) properly research, develop, design, manufacture, test, distribute, sell, apply, and use PFAS and products containing PFAS;
- (b) take all reasonable steps necessary to not manufacture, distribute, sell, apply, and use products that were unreasonably dangerous to those who are exposed to them;
- (c) adequately test, study, and confirm the import of findings related to the toxicity and harmful effects of PFAS to human health;
- (d) adequately test, study, and confirm the import of findings related to the ability and likelihood of PFAS to migrate into the Plaintiff's and Class

Members' wells, and of the ability and likelihood of products containing PFAS to deposit and/or disseminate into the wells;

- (e) ensure that PFAS, and products containing PFAS, were safe and fit for intended and/or reasonably foreseeable use;
- (f) ensure that PFAS, and products containing PFAS, were at least as safe as alternative formulations or methods of formulating these products;
- (g) provide accurate, true, and correct information regarding the risks of PFAS and products containing PFAS; and
- (h) not obstruct, hide, delay, and/or withhold information regarding the risks of PFAS to human health, and the risks of PFAS contamination in drinking water, from the public and from the Plaintiff and Class Members.

74. The Defendants breached the standard of care expected in the circumstances, and were therefore negligent in the development, design, manufacture, testing, distribution, sale, application and use of PFAS and products containing PFAS by, *inter alia*:

- (a) continuing to manufacture, distribute, sell, apply, and/or use PFAS, and products containing PFAS, when they knew or ought to have known of the potential risks of PFAS to human health, and the need for further testing to confirm the true risks of PFAS to human health;
- (b) failing to design and develop PFAS, and products containing PFAS, to ensure that they were at least as safe as alternative formulations or methods of formulating these products; and
- (c) consistently obstructing, hiding, delaying and/or withholding information regarding the risks of PFAS to human health, and the risks of PFAS contamination in drinking water, from the general public, from the Plaintiff and Class Members.

75. At all material times, the Defendants knew or ought to have known that their PFAS, or products containing PFAS, would migrate into and contaminate drinking water supplied by the Plaintiff's and Class Members' wells. Furthermore, the Defendants knew or ought to have known that PFAS contamination in the drinking water from the wells could pose harm to the health of the Plaintiff and Class Members.

76. By manufacturing, distributing, selling, applying and/or using PFAS, or products containing PFAS, while knowing or having reason to know that PFAS could contaminate the drinking water of the Plaintiff and Class Members, and knowing or having reason to know that this could pose health risks to the Plaintiff and Class Members, the Defendants failed to exercise the standard of care required in the development, design, manufacture, testing, distribution, sale, application, and use of PFAS and products containing PFAS.

Negligence (Failure to Warn)

77. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members to:

- (a) properly, adequately, and fairly warn of the risks of PFAS contamination in drinking water;
- (b) properly, adequately, and fairly warn of the ability and likelihood of PFAS to migrate into wells, and of the ability and likelihood of products containing PFAS to deposit and/or disseminate into the drinking water supplied by wells;
- (c) ensure that the general public, and Canadians relying on drinking water supplied by wells, were kept fully and completely informed about the defects and risks associated with PFAS;
- (d) ensure that all Canadians, and Canadians relying on drinking water supplied by wells, understood the testing, treatment, and/or remediation efforts that could be taken to mitigate the risks associated with PFAS; and

- (e) monitor, investigate, evaluate and follow up on reports and studies of possible risks associated with PFAS and/or the prevalence of PFAS in drinking water.

78. The Defendants breached the standard of care expected in the circumstances. The Defendants were therefore negligent in the manufacture, distribution, sale, application, and/or use of PFAS without proper, adequate and fair warning of the risks to human health associated with PFAS by, *inter alia*:

- (a) failing to disclose to the general public, the Plaintiff, and the Class Members that PFAS, and products containing PFAS, could migrate and eventually contaminate drinking water, and that PFAS posed a risk to human health;
- (b) failing to provide the general public, the Plaintiff, and the Class Members with an adequate and/or fair warning of the full risks associated with PFAS and products containing PFAS;
- (c) failing to properly, adequately, and fairly warn the general public, the Plaintiff, and the Class Members of the unreasonable risks of PFAS, and products containing PFAS, when exposed to or ingested in manners that are directed, instructed, and/or foreseeable;
- (d) failing to warn the general public, the Plaintiff, and the Class Members that there are safer and effective available alternatives to PFAS and products containing PFAS; and
- (e) consistently obstructing, hiding, delaying, and/or withholding information regarding the risks of PFAS to human health, and the risks of PFAS contamination in drinking water, from the public and from the Plaintiff and Class Members.

79. The Defendants knew or ought to have known that the general public and consumers of PFAS, and/or products containing PFAS, were unaware of the ability and

likelihood of PFAS to migrate into the the Plaintiff's and Class Members' wells, or the magnitude of the risks associated with PFAS contamination in drinking water.

80. By manufacturing, distributing, selling, applying, and/or using PFAS, or products containing PFAS, while failing to adequately warn of the ability and likelihood that PFAS would contaminate the wells on the Plaintiff's and Class Members' properties, and that this PFAS contamination could pose health risks to the Plaintiff and Class Members, the Defendants failed to exercise the standard of care required in the development, design, manufacture, testing, distribution, sale, application and use of PFAS and products containing PFAS.

81. The contamination of the Plaintiff's and Class Members' wells was caused by the negligence of the Defendants, their servants and their agents.

82. The Plaintiff pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

Civil Conspiracy

83. The Defendants committed the tort of civil conspiracy.

84. The Defendants committed the tort of unlawful means conspiracy. The Defendants acted in combination to commit unlawful acts, including committing the torts of private nuisance, public nuisance, negligence, and breaching their statutory obligations under the *Competition Act*. These unlawful acts are outlined in more detail from paragraphs 55 to 61 above.

85. At all material times, the Defendants knew, or ought to have known, that injury to the Plaintiff and Class Members was expected to occur from the Defendants' misconduct. In furtherance of the conspiracy, the Defendants' misconduct resulted in harm to the Plaintiff and Class Members.

86. In addition, or in the alternative, the Defendants committed conspiracy with the predominant purpose to injure the Class. The Defendants acted in concert, with a joint plan and common intention, to injure the Plaintiff and Class Members, by further

manufacturing, distributing, selling, applying, and/or using PFAS, or products containing PFAS, while knowing that doing so would result in widespread PFAS contamination and risks to human health.

87. The result of the Defendants' predominant purpose to injure the Plaintiff and the Class is the expanding of the market for PFAS and products containing PFAS, and the maximization of the Defendants' profits from PFAS and products containing PFAS, thereby causing widespread PFAS contamination, knowing or having ought to have known that PFAS poses risks to human health and would cause harm to the Class.

88. The Defendants' acts were directed at the Class Members and the Defendants knew that harm to the Class would ensue. The Defendants' conspiracy resulted in damages to the Plaintiff and Class Members. The Defendants are jointly liable for these damages.

Breach of the Competition Act

89. The *Competition Act* applies to business transacted in Canada. The Defendant's products containing PFAS are "products" within the meaning of section 2 and section 52 of the *Competition Act*.

90. At all material times, the Defendants knowingly and recklessly made representations to the public regarding PFAS, and their products containing PFAS, that were misleading in a material respect, for the purpose of promoting the supply or use of their PFAS and products containing PFAS, and to promote their business interests. This conduct violates section 52 of the *Competition Act*.

91. As a result of this conduct, which is contrary to section 52 of the *Competition Act*, the Plaintiff and Class Members chose to use PFAS and products containing PFAS, when they otherwise would not have. The Plaintiff and Class Members suffered damages as a result of the Defendants' breach of section 52 of the *Competition Act*.

92. The Plaintiff and Class Members seek recovery of damages pursuant to section 36 of the *Competition Act*.

Breach of the Environmental Protection Act

93. The Defendants are liable for damages pursuant to section 99(2) of the *Environmental Protection Act* and the analogous provisions in other provincial environmental protection legislation.

94. PFAS permeate into the environment and migrate through soil, sediment, and water sources, thereby contaminating drinking water supplied by wells and resulting in adverse health effects. PFAS, and products containing PFAS, constitute a "pollutant" within the meaning of section 91(1) of the *Environmental Protection Act* and the analogous provisions in other provincial environmental protection legislation. PFAS, and products containing PFAS, constitute a "pollutant that causes or is likely to cause an adverse effect" within the meaning of section 99(2) of the *Environmental Protection Act* and the analogous provisions in other provincial environmental protection legislation.

95. The Defendants, and their employees and agents, owned, managed, and/or controlled PFAS immediately before the first discharge of the pollutant into the natural environment. The Defendants are the "owners" and/or "persons having control" of PFAS, and products containing PFAS, within the meaning of section 91(1) of the *Environmental Protection Act* and the analogous provisions in other provincial environmental protection legislation.

96. The Defendants' manufacture, distribution, sale, application, and/or use of PFAS, and products containing PFAS, resulted in the discharge of PFAS into the natural environment, from or out of a structure, vehicle or other container, and that is abnormal in quality or quantity in light of all the circumstances of the discharge. The Defendants' contamination of PFAS in the Plaintiff's and Class Members' wells constitutes a "spill" within the meaning of section 99(2) of the *Environmental Protection Act* and the analogous provisions in other provincial environmental protection legislation.

97. At all material times, the Defendants, as owners and/or persons in control of PFAS, and products containing PFAS, knew or ought to have known of the spill of PFAS into the Plaintiff's and Class Members' wells, and knew or ought to have known that PFAS caused, is causing, or is likely to cause adverse effects. The Defendants failed their duty to do everything practicable to prevent, eliminate and ameliorate the adverse effect and to

restore the natural environment, pursuant to section 93(1) of the *Environmental Protection Act* and the analogous provisions in other provincial environmental protection legislation.

98. The damages suffered by the Plaintiff and Class Members are the direct result of the Defendants' spill of a pollutant and/or the Defendants' neglect or default in carrying out the duty imposed by section 93(1) of the *Environmental Protection Act* and the analogous provisions in other provincial environmental protection legislation.

99. The Defendants are liable to the Plaintiff and Class Members for these damages.

G. RELIEF SOUGHT

Damages

100. As a result of the Defendants' wrongful conduct, the Plaintiff and Class Members have suffered and will continue to suffer damages including, but not limited to:

- (a) costs to investigate, sample, test, and assess PFAS contamination in the well water on the Class Members' properties;
- (b) costs to install and maintain treatment and remediation systems to address PFAS contamination in the well water on the Class Members' properties;
- (c) costs to install and maintain monitoring systems to assess and evaluate PFAS contamination in the well water on the Class Members' properties;
- (d) costs to provide alternative water supply to the Class Members' properties in the interim until remediation can be completed; and
- (e) other costs or consequential damages arising from the PFAS contamination caused by the Defendants.

Punitive Damages

101. The Plaintiff and Class claim for punitive damages as a result of the egregious, outrageous and unlawful conduct of the Defendants, and in particular, their callous and

reckless disregard for the health and well-being of millions of Canadians who rely on drinking water from wells.

102. Punitive damages are particularly justified because of the Defendants' active suppression of and efforts to influence the public health awareness of the risks of PFAS to human health. By suppressing unfavourable research and publicly and internally disputing claims about the health risks of PFAS, despite knowing of these risks, the Defendants significantly delayed the publicizing of the health risks of PFAS while profiting extensively from the sale of products containing PFAS. All the while, the Defendants' PFAS, and/or the Defendants' products containing PFAS, continued to permeate the environment and contaminate drinking water across Canada, including the drinking water relied upon by the Plaintiff and Class Members. An award of punitive damages would help deter the Defendants and others from similar conduct in the future.

H. REAL AND SUBSTANTIAL CONNECTION TO ONTARIO

103. The Plaintiff pleads that this action has a real and substantial connection with Ontario because, among other things:

- (a) the Defendants distribute and sell their products in Ontario and derive substantial revenue from such sales;
- (b) the Defendants' head offices, or the offices of their agents, subsidiaries, affiliates, representatives, or predecessors, are located in Ontario;
- (c) the Defendants advertised their products, including PFAS and products containing PFAS, in Ontario;
- (d) the torts were committed in Ontario;
- (e) the Plaintiff's and Class Members' wells were contaminated with PFAS in Ontario and sustained consequent damages in Ontario; and
- (f) the Defendants are necessary and proper parties to this action.

104. The Plaintiff pleads and relies on rules 17.02(a), (g), and (p) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, permitting service outside Ontario in respect of the foreign Defendants.

I. STATUTES RELIED UPON

105. The Plaintiff relies upon the following statutes:

- (a) *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (b) *Competition Act*, R.S.C. 1985, c. C-34;
- (c) *Environmental Protection Act*, R.S.O. 1990, c. E.19., and analogous environmental protection statutes in other provinces.

106. The Plaintiff requests that this action be tried in Toronto, Ontario.

August 26, 2024

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

Jonathan Ptak (LSO # 45773F)

Tel: 416-595-2149

Fax: 416-204-4924

Adam Tanel (LSO # 61715D)

Tel: 416-595- 2072

Fax: 416-204-2889

Ramna Safeer (LSO # 84419S)

Tel: 416-595-2038

Fax: 476-977-3316

McKENZIE LAKE LAWYERS LLP

1800-140 Fullarton St

London, ON N6A 5P2

Matthew Baer (LSO # 48227K)

Tel: 519-667-2646

Fax: 519-672-2674

Chelsea Smith (LSO # 71843N)

Tel: 519-672-5666 ext. 7308

Fax: 519-672-2674

Lawyers for the Plaintiff

MARK MEAD
Plaintiff

and 3M COMPANY, ET AL.
Defendants

Court File No.: CV-24-00726358-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF CLAIM

KOSKIE MINSKY LLP

900-20 Queen St. W.
Toronto, ON M5H 3R3

Jonathan Ptak (LSO#: 45773F)

Tel: 416-595-2149

Fax: 416-204-4924

Adam Tanel (LSO#: 61715D)

Tel: 416-595-2072

Fax: 416-204-2889

Ramna Safeer (LSO#: 84419S)

Tel: 416-595-2038

Fax: 476-977-3316

McKENZIE LAKE LAWYERS LLP

1800-140 Fullarton St.
London, ON N6A 5P2

Matthew Baer (LSO # 48227K)

Tel: 519-667-2646

Fax: 519-672-2674

Chelsea Smith (LSO # 71843N)

Tel: 519-672-5666 ext. 7308

Fax: 519-672-2674

Lawyers for the Plaintiff