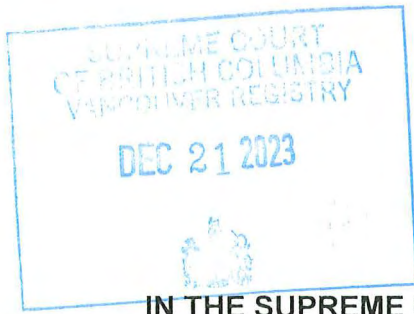




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ACTION NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

JAMES ROSS MCLEOD

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 AND TYCO FIRE PRODUCTS L.P.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Defined Terms

1. In this Notice of Civil Claim, in addition to the terms that are defined elsewhere herein, the following definitions apply:

- (a) **“AFFF”** means aqueous film-forming foam;
- (b) **“Class”** and **“Class Member”** means any individual in Canada who has been diagnosed with one or more of the PFAS Cancers and Illnesses after using (at least 10 times over a lifetime) or being exposed to AFFF containing PFAS (combined duration of exposure of at least one year during the Class Period) manufactured by the Defendants, or their beneficiaries pursuant to the *Family Compensation Act*, RSBC 1996, c. 126 and comparable legislation in the other provinces and territories;
- (c) **“Class Period”** means the period after February 18, 1970 to the present;
- (d) **“Defendants”** means, together 3M Company, 3M Canada Company, E.I. DuPont De Nemours and Company doing business as EIDP, Inc., DuPont Chemical Solutions Enterprise, E.I. DuPont Canada – Thetford Inc., The Chemours Company, The Chemours Company FC LLC, The Chemours Company Canada and Tyco Fire Products L.P.;

- (e) **“PFAS”** means the class of human-made fluorochemicals called per- and polyfluoroalkyl substances; and
- (f) **“PFAS Cancers and Illnesses”** means skin, pancreatic, kidney, breast, liver, bladder, prostate, colorectal and testicular cancers, leukemia, Non-Hodgkin’s and Hodgkin’s lymphoma, thyroid disease, Hashimoto’s disease, and ulcerative colitis.

Nature of the Action

2. This proposed class proceeding concerns the class of human-made PFAS, a family of chemical compounds that includes perfluorooctanoic acid (“PFOA”) and perfluorooctane sulfonic acid (“PFOS”). PFAS are widely used as an ingredient in AFFF in Canada.
3. PFAS are known colloquially as “forever chemicals” because of their persistence in the environment and resistance to biological, environmental, or photochemical degradation.
4. PFAS are highly water soluble, which facilitate the ease at which they spread throughout the environment. This mobility is made more dangerous by their persistence in the environment and resistance to biologic, environmental, or photochemical degradation. PFAS are readily absorbed in animal and human tissues after exposure and accumulate in the serum, kidney, and liver.
5. The Defendants and their corporate predecessors developed, manufactured, formulated, sold and imported AFFF containing PFAS into Canada under various brand names since at least the 1940s. The Defendants imported PFAS to Canada in the form of potassium salt, used for AFFF. Throughout the Class Period, AFFF containing PFAS manufactured by the Defendants was commonly purchased by the Canadian Armed Forces and civilian fire departments and used by Class Members throughout Canada in firefighting and other applications.
6. Use of or exposure to AFFF containing PFAS causes or contributes to the development of specific types of cancer and other illness, including the PFAS Cancers and Illnesses: skin, pancreatic, kidney, breast, liver, bladder, prostate, colorectal, and testicular cancers, leukemia, Non-Hodgkin’s and Hodgkin’s lymphoma, thyroid disease, Hashimoto’s disease, and ulcerative colitis.
7. According to the United States Environmental Protection Agency, studies indicate that exposure to PFAS over certain levels may result in cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), thyroid effects and others (e.g., thyroid disease).

8. The Defendants knew of the risks of using products containing PFAS, including AFFF, for several decades before making such knowledge public. The Defendants breached their duties as the manufacturers and importers of PFAS in Canada by failing to adequately and in a timely manner warn purchasers and users of AFFF, including the Class Members, of the serious risks associated with the use of or exposure to PFAS.

The Plaintiff

9. The Plaintiff, James Ross McLeod (the “Plaintiff”), has an address for delivery of 820 – 980 Howe Street, in the City of Vancouver, in the Province of British Columbia.

10. The Plaintiff used or was exposed to PFAS in AFFF for several years, often without appropriate protective gear or personal protective equipment.

11. The Plaintiff was a member the Canadian Navy and worked as a fire fighting instructor and in other capacities in Halifax, NS, Esquimalt, BC and other locations in Canada from 1983 onwards. The Plaintiff worked with AFFF containing PFAS extensively, including the “Light Water” brand AFFF manufactured by the 3M Defendants (defined below). During his time in the armed forces, he often had direct exposure to AFFF containing PFAS.

12. At all material times, the Plaintiff did not know the nature and extent of the injuries that could result from the intended and reasonably foreseeable use of or exposure to AFFF containing PFAS.

13. The Plaintiff was diagnosed with prostate cancer in late 2022, which has caused the Plaintiff to suffer personal injuries, pain, suffering, disability and emotional distress. The Plaintiff’s injuries were caused by his use of or exposure to AFFF containing PFAS.

14. The Plaintiff would not have been exposed to or used AFFF containing PFAS had the Defendants provided accurate information or warnings to purchasers and users of AFFF containing PFAS, including the Canadian Armed Forces, civilian fire departments and the Class Members, with respect to the possible health complications from their use of or exposure to AFFF containing PFAS.

15. The Plaintiff brings this action on behalf of all the Class Members in Canada.

The Defendants

3M Defendants

16. The Defendant, 3M Company is a Delaware Corporation and conducts business worldwide, including in Canada, with its principal place of business located at 3M Center, St. Paul Minnesota 55144.

17. The Defendant, 3M Canada Company is a body corporate, duly registered under the *Business Corporations Act*, S.B.C. 2002, c. 57 and amendments thereto as an Extraprovincial Company pursuant to the laws of the Province of British Columbia and has its registered and records office at Suite 2200, 700 West Georgia Street, Vancouver, in the Province of British Columbia. The Defendant 3M Canada Company has its corporate headquarters at Po Box 997 Halifax, in the Province of Nova Scotia.

18. The Defendants 3M Company and 3M Canada Company are collectively referred to herein as the “3M Defendants”.

19. The 3M Defendants developed, designed, manufactured, formulated, distributed, labeled, sold, transported, stored, loaded, mixed, applied or used PFAS alone or in end products manufactured with or containing PFAS in Canada during the Class Period, including AFFF.

20. At all times relevant to this case, the businesses of the 3M Defendants were related, and they were each involved in the development, design, manufacture, formulation, distribution, labeling or sale, directly or indirectly, though an agent, subsidiary, affiliate, representative or predecessor, of AFFF containing PFAS in Canada and British Columbia.

21. The business of each of the 3M Defendants is inextricably interwoven with that of the other for the purposes of the development, design, manufacture, formulation, distribution, labeling or sale of AFFF containing PFAS in Canada and British Columbia. In view of the close relationship between the 3M Defendants and the foregoing, each of the 3M Defendants is jointly and severally liable for the acts and omissions of the other.

DuPont Defendants

22. The Defendant E.I. DuPont de Nemours & Company doing business as EIDP, INC. (“DuPont”) is a Delaware Corporation, having a principal place of business located at 974 Centre Road Wilmington, Delaware 19805.

23. The Defendant DuPont is a successor in interest to the Defendant DuPont Chemical Solutions Enterprise (“DuPont Chemical”), a Delaware corporation with a principal place of business located at 1007 Market Street Wilmington, Delaware 19898.

24. The Defendant E.I. DuPont Canada – Thetford Inc. (“DuPont Canada”) is a body corporate, duly registered under the *Canada Business Corporations Act*, S.B.C. 2002, c. 57 and amendments thereto pursuant to the laws of Canada and has its registered and records office at 1045 Boul. Monfette Nord, Thetford Mines, in the Province of Quebec.

25. The Defendant The Chemours Company (“Chemours”) is a Delaware Corporation, having a principal place of business at 1007 Market Street, Wilmington, Delaware 19889.

26. In 2015, the Defendant DuPont spun off its “performance chemicals” business to the Defendant Chemours along with certain environmental liabilities.

27. The Defendant The Chemours Company FC, LLC (“Chemours FC”), a successor in interest to DuPont Chemical, is a corporation organized and existing under the laws of Delaware, having a principal place of business at 1007 Market Street Wilmington, Delaware 19899.

28. The Defendant The Chemours Canada Company (“Chemours Canada”) is a body corporate, duly registered under the *Business Corporations Act*, S.B.C. 2002, c. 57 and amendments thereto as an Extraprovincial Company pursuant to the laws of the Province of British Columbia and having its registered and records office at 550 Burrard Street, Suite 2900, Vancouver, in the Province of British Columbia. The Defendant Chemours Canada has its head office at P.O. Box 730, Halifax, in the Province of Nova Scotia.

29. The Defendants DuPont, DuPont Chemical, DuPont Canada, Chemours, Chemours FC and Chemours Canada are collectively referred to herein as the “DuPont Defendants”.

30. The DuPont Defendants developed, designed, manufactured, formulated, distributed, labeled, sold, transported, stored, loaded, mixed, applied or used PFAS alone or in end products manufactured with or containing PFAS in Canada during the Class Period, including PFAS that were incorporated into AFFF by the other Defendants, or others presently unknown to the Plaintiffs.

31. At all times relevant to this case, the businesses of the DuPont Defendants were related, and they were each involved in the development, design, manufacture, formulation, distribution, labeling or sale, directly or indirectly, though an agent, subsidiary, affiliate, representative or predecessor, of PFAS in Canada and British Columbia.

32. The business of each of the DuPont Defendants is inextricably interwoven with that of the other for the purposes of the development, design, manufacture, formulation, distribution, labeling or sale of PFAS in Canada and British Columbia. In view of the close relationship between the DuPont Defendants and the foregoing, each of the DuPont Defendants is jointly and severally liable for the acts and omissions of the other.

33. At all material times, including during the Class Period, the DuPont Defendants and the 3M Defendants acted pursuant to a common design to develop, design, formulate, test, manufacture, market and sell PFAS in Canada, all in order to maximize profit from the sale of AFFF containing PFAS in Canada.

34. In furtherance of the common design, the DuPont Defendants and the 3M Defendants shared market data, sales data, sales forecasts, marketing plans and demand estimates.

35. The arrangement ensured that all parties to the common design had an incentive to maximize profit from sales of AFFF containing PFAS in Canada.

36. The DuPont Defendants and the 3M Defendants are jointly liable for their wrongful acts.

Tyco

37. The Defendant Tyco Fire Products L.P. ("Tyco") is a limited partnership registered under the laws of Delaware, with an address for service c/o Corporation Trust Company, located at 1209 Orange St, Wilmington, Delaware 19805 USA. The Defendant Tyco conducts business worldwide, including in Canada.

38. The Defendant Tyco is the successor in interest of The Ansul Company ("Ansul"), having acquired Ansul and the Ansul brand of products in 1990.

39. At all times relevant to this case, Ansul manufactured, distributed and sold PFAS Products in Canada. After Tyco acquired Ansul in 1990, Tyco continued to manufacture, distribute and sell AFFF containing PFAS in Canada under the Ansul brand.

40. All of the above-mentioned Defendants shared the common purpose of producing, manufacturing, marketing, selling, or distributing PFAS products or AFFF containing PFAS in Canada and profited therefrom.

41. At times not presently known to the Plaintiff, the DuPont Defendants conspired with the 3M Defendants and others, including the Defendant Tyco and its predecessors, with respect to the development, design, manufacture, formulation, distribution, labeling or sale of PFAS and AFFF containing PFAS in Canada.

42. The conspiracy described above was intended to cause harm to class members, in the form of personal injury, and was unlawful, by virtue of being contrary to the duty to warn of known risks of AFFF containing PFAS, and the Defendants and their co-

conspirators should have known in the circumstances that injury to the Plaintiff and similarly situated persons would be likely to result.

43. At all material times, each of the Defendants hereinabove was the agent, servant, employee, partner, alter ego, aider and abettor, co-conspirator and/or joint venturer of each of the Defendants named herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, and/or joint venture, and each Defendants has ratified and approved the acts of each of the remaining Defendants.

44. The predominant purpose of the conduct of the Defendants and their co-conspirators was to cause injury to the plaintiffs and similarly situated persons, by maximizing profit from sales of AFFF containing PFAS in Canada when they knew or ought to have known of the health risks posed by use or exposure of PFAS and AFFF containing PFAS.

The Contaminant - PFAS

45. PFAS is a family of chemical compounds that include PFOA and PFOS and many other compounds. PFOA and PFOS are within a class of chemicals known as perfluoroalkyl acids, which are composed of a chain of carbon atoms in which all but one of the carbon atoms are bonded to fluorine atoms, and the last carbon atom is attached to a functional group. The carbon-fluorine bond is one of the strongest chemical bonds that occur in nature which is why these molecules are so persistent and bioaccumulate.

46. PFOS and PFOA do not occur in nature. Rather, they are stable, human-made chemicals. They are highly water soluble, persistent in the environment and resistant to biologic, environmental, or photochemical degradation. Because these compounds are water soluble and do not readily adsorb to sediments or soil, they tend to stay in the water column and can be transported long distances.

47. PFOS and PFOA are readily absorbed in human tissues after oral exposure and accumulate in the serum, kidney, and liver.

48. PFOS and PFOA are persistent in the human body and resistant to metabolic degradation. A short-term exposure can result in a body burden that persists for years and can increase with additional exposures.

49. PFOS and PFOA are relatively stable once ingested, so they bioaccumulate in individual organisms for significant periods of time. Because of this stability, any newly ingested PFOS or PFOA will be added to any PFOS or PFOA already present. In humans, PFOS or PFOA remain in the body for years.

50. Since they were first produced, information has emerged showing negative health effects caused by exposure to PFOS and PFOA, including but not limited to:

- a. Altered growth, learning and behavior of infants and older children;
- b. Lowering a woman's chance of getting pregnant;
- c. Interference with the body's natural hormones;
- d. Increased cholesterol levels;
- e. Modulation of the immune system;
- f. Increased risk of certain cancers; and
- g. Increased risk of ulcerative colitis.

51. The Environmental Protection Agency ("EPA") has warned that there is evidence that PFAS are human carcinogens.

52. The Defendants manufactured, developed and sold AFFF containing PFAS. AFFF is a water-based foam that was first developed in about the 1940s to extinguish flammable liquid fuel fires at military bases, aircraft carrier locations, and airports, among other places. AFFF is typically sprayed directly onto a fire, where it then works by coating the ignited fuel source, preventing its contact with oxygen, and suppressing combustion.

53. The vast majority of AFFF was used in training, which was an activity promoted by the Defendants. When used as directed, instructed or intended, AFFF containing PFAS released PFOS and PFOA onto the people using the AFFF and those in close proximity.

54. AFFF containing PFAS has been used for its intended purpose in the process of fire protection, training, and response activities for many years. During these activities AFFF containing PFAS was used as directed, instructed or intended by the Defendants, which allowed PFOS and PFOA to enter into and onto the Plaintiff and Class Members where the components caused serious injury to the Plaintiff and Class Members.

55. AFFF can be made without PFAS. Despite knowledge of this fact as well as knowledge of the toxic nature of AFFF containing PFAS, the Defendants continued to develop, manufacture, formulate, distribute, sell or transport PFAS to be used in AFFF which caused harm and injury to the Plaintiff and Class Members.

56. Due to the PFAS chemicals' persistent nature, among other things, PFAS chemicals have, and continue to, cause injury and damage to people who used or were exposed to AFFF.

57. As far back as 1979, the Defendants knew that AFFF containing PFAS would be used, released, stored and disposed of near the vicinity of drinking water wells thereby contaminating same and exposing Class Members to PFAS.

58. At all relevant times, the Defendants were sophisticated and knowledgeable in the art and science of developing, manufacturing, formulating, distributing, selling, transporting, storing, loading, mixing, applying or using products containing PFAS. The Defendants understood far more about the properties of PFAS—including the potential hazards they posed to human health—than purchasers and users of AFFF containing PFAS, including the Class Members. Nevertheless, the Defendants declined to use their sophistication and knowledge to design safer products or warn purchasers of AFFF containing PFAS and the Class Members of the dangers associated with their AFFF containing PFAS.

The History of AFFF containing PFAS in Canada

59. The Defendants designed, manufactured and sold AFFF containing PFAS in the United States and Canada under various brand names.

60. From about the 1940s until a time presently unknown to the Plaintiff, the 3M Defendants manufactured, distributed, and sold AFFF containing PFAS in Canada.

61. In 2000, under pressure from the EPA in the United States, the 3M Defendants announced a phasing out of production of PFAS in the United States.

62. In December 2022, the 3M Defendants announced they were going to exit PFAS manufacturing altogether by the end of 2025, partly due to regulations coming in around the world to restrict the chemicals.

63. From 1951 until a time presently unknown to the Plaintiff, the Defendant DuPont manufactured, designed, distributed and sold PFAS to the other Defendants and to others presently unknown to the Plaintiff for the purposes of manufacturing in Canada.

64. In 2015, the Defendant DuPont spun off its "performance chemicals" business to the Defendant Chemours along with certain environmental liabilities. From 2015 until present, the Defendant Chemours continues to manufacture, distribute and sell PFAS in Canada.

65. From 1963 until a time presently unknown to the Plaintiff, the Defendant Tyco and its predecessor Ansul manufactured, designed, distributed and sold AFFF containing PFAS in Canada.

66. The 3M Defendants and Ansul worked together to develop an effective firefighting system for naval applications. In 1963, the 3M Defendants created AFFF formulation FX183, or "Light Water", and established pricing for sale to Ansul.

67. The following year, Ansul and the 3M Defendants entered into an agreement for testing and finalizing the 3M Defendants' AFFF formulations for sale to the military and commercial markets.

68. Ansul and the 3M Defendants continued collaborating to reformulate, manufacture, distribute and sell Light Water throughout the next decade.

69. Data from the federal government of Canada indicates that between 1997 and 2000 alone, almost 600,000 kg of PFAS were imported into Canada.

70. The most significant imports of PFAS into Canada during the Class Period were for use in the production of AFFF.

71. Sectors using AFFF containing PFAS in Canada include the Canadian Armed Forces and other Government of Canada operations, civil aviation, municipal fire departments, petroleum, petrochemical and emergency responders.

72. Information from the Department of National Defence indicates that airport and military base sites in every Province and Territory in Canada have confirmed PFAS contamination from the use of AFFF. These areas largely correspond to fire-training areas, emergency response locations, AFFF lagoons, hangar-related AFFF storage tanks and pipelines, and fire station testing and maintenance areas.

73. Given the half-life of PFAS (at some estimates, between 40 – 235 years), the estimated existing stock of AFFF containing PFAS at airports, military installations and industrial facilities in Canada (approximately 300 tonnes, representing approximately 3 tonnes of PFAS), and its continued use throughout the country, AFFF remains a potential PFAS emission source and ongoing cause of injury to Class Members.

The Defendants' Knowledge of the Toxicity of PFAS

74. In the approximately 50 years that the Defendants manufactured and sold PFAS-containing products, including AFFF, they investigated them extensively, generating hundreds of studies and reports relating to their toxicology, pharmacology, epidemiology, teratology, carcinogenicity, fate, transport, and human exposure.

75. These studies repeatedly identified and confirmed the human and environmental risks associated with PFAS containing products – information that the Defendants chose not to adequately and timely disclose to appropriate government authorities, including Health Canada and the Canadian Armed Forces (a regular purchaser of PFAS and particularly AFFF), despite having a duty to do so pursuant to s. 64 of The *Canadian Environmental Protection Act, 1999* (CEPA) and precursor legislation.

76. The first study conducted by the Defendant DuPont identifying human toxicity concerns with PFAS was received on February 18, 1970. The Defendant DuPont and Defendant 3M Company began sharing their research and findings on PFAS toxicity in the late 1970s. By at least the early 1980s, additional research and testing performed by Defendant 3M Company indicated that elevated incidence of certain cancers and other adverse health effects, including elevated liver enzymes and birth defects, had been observed among workers exposed to such materials, including at least PFOS, but such data was not published, provided to governmental entities as required by law, or otherwise publicly disclosed at the time. In the few instances when the Defendants did provide information to the relevant government authorities, they did so in an incomplete and misleading manner.

77. In 2016, the National Toxicology Program of the United States Department of Health and Human Services (“NTP”) and the International Agency for Research on Cancer (“IARC”) both released extensive analyses of the expanding body of research regarding the adverse effects of PFAS. The NTP concluded that both PFOA and PFOS are “presumed to be an immune hazard to humans” based on a “consistent pattern of findings” of adverse immune effects in human (epidemiology) studies and “high confidence” that PFOA and PFOS exposure was associated with suppression of immune responses in animal (toxicology) studies.

78. IARC similarly concluded that there is “evidence of the carcinogenicity of . . . PFOA” in humans and in experimental animals, meaning that “[a] positive association has been observed between exposure to the agent and cancer for which a causal interpretation is ...credible.”

79. California has added PFOA and PFOS to its Proposition 65 list as chemicals known to cause developmental toxicity and cancer under the *Safe Drinking Water and Toxic Enforcement Act* of 1986.

80. In May 2023, Environment and Climate Change Canada and Health Canada published a *Risk Management Scope for Per- and Polyfluoroalkyl Substances (PFAS)*, stating, *inter alia*:

While there are various potential sources of PFAS in Canada, exposure sources of concern include firefighting foams containing PFAS, and other sources and products that contain PFAS.

In particular, the Government of Canada is considering:

- Regulatory or non-regulatory controls to minimize environmental and human exposure to the class of PFAS from firefighting foams;
- Gathering information necessary to identify and prioritize options for reducing environmental and human exposure from the class of PFAS from other sources and products; and
- Aligning with actions in other jurisdictions, where appropriate.

To inform risk management decision-making, information on the following topics should be provided (ideally on or before July 19, 2023), to the contact details identified in section 8 of this document:

- availability of alternatives to PFAS, in products including but not limited to firefighting foams;
- socio-economic impacts of replacing PFAS, including costs and feasibility of replacement; and
- types, quantities, and concentrations of PFAS (including Chemical Abstract Service registry numbers, units of measurement, and applications) in products manufactured in, imported into, and sold in Canada.

81. At all times relevant herein, the Defendants knew or should have known that AFFF containing PFAS presented/present a risk to human health and could be absorbed in the lungs and gastrointestinal tract, potentially causing severe damage to the skin, liver, kidneys and central nervous system, in addition to other toxic effects, and that PFAS were/are known carcinogens that cause genetic damage.

82. The Defendants' lack of transparency regarding human exposure to PFAS is the cause for the government's ignorance. In an attempt to conceal their delayed disclosure, the Defendants claimed this discovery to be a "complete surprise" that was only revealed by recent advancements in analytical techniques. But this explanation was untrue.

83. The Defendants had and breached their duty to warn purchasers of AFFF containing PFAS and the Class Members of the known risks for health hazards arising

from the application, use, or disposal of AFFF containing PFAS when such products were being applied, used, or disposed of as instructed, directed or intended.

84. The Defendants elected to develop, manufacture, formulate, distribute, sell, transport, store, load, mix, apply or use AFFF containing PFAS, thereby placing profits over human health.

Part 2: RELIEF SOUGHT

85. The Plaintiff claims, on his own behalf, and on behalf of a class of similarly situated persons residing in Canada, as follows:

- a. An order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff under the *Class Proceedings Act*;
- b. General damages;
- c. Special damages;
- d. Punitive damages;
- e. An accounting for and disgorgement of profits or revenues;
- f. Damages pursuant to the *Family Compensation Act*, RSBC 1996, c 126, as amended, and similar legislation and common law in other provinces, where applicable;
- g. Recovery of health care costs incurred by the Ministry of Health Services on his behalf pursuant to the *Health Care Cost Recovery Act*, S.B.C. 2008, c. 27, and comparable legislation in the other provinces and territories;
- h. Costs;
- i. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- j. Such further and other relief this Honourable Court may deem just.

Part 3: LEGAL BASIS

Negligence (Negligent Design)

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

- (a) undertake sufficient studies and testing to determine whether PFAS were safe for those using or exposed to them, and whether they were suitable for their intended use in fire suppression;
- (b) design, manufacture, produce, promote, formulate, create, develop, sell or distribute AFFF containing PFAS after thorough and adequate pre- and post- market testing;
- (c) adequately test AFFF containing PFAS to fully reveal the magnitude of the risks associated with their use and exposure, including, but not limited to, the increased risk of developing the PFAS Cancers and Illnesses;
- (d) design and manufacture AFFF containing PFAS to ensure that they are at least as safe and effective as other products on the market;
- (e) not assert that AFFF containing PFAS were safe and suitable for their intended use when, in fact, the Defendants knew or should have known that this was not the case;
- (f) conduct adequate testing to determine the extent to which exposure to AFFF containing PFAS was likely to occur through inhalation, ingestion, and absorption into the bodies of persons who used AFFF containing PFAS, were in the vicinity of AFFF containing PFAS during their use, or entered locations where AFFF containing PFAS was used or the areas near where AFFF containing PFAS were used;
- (g) conduct adequate testing to determine the extent to which spray from AFFF containing PFAS was likely to drift, including their propensity to drift, the distance over which they were likely to drift, and the extent to which droplets of AFFF containing PFAS were likely to land on or enter the bodies of those using AFFF containing PFAS, or others in the vicinity during or after use; and
- (h) conduct adequate tests to determine the extent to which AFFF containing PFAS, when inhaled, ingested, applied to or absorbed into the bodies of people who use them, who are in the vicinity during their use, or who enter locations where AFFF containing PFAS were used or areas near such locations, are likely to cause or contribute to clinically significant disease, including PFAS Cancers and Illnesses.

87. The Defendants breached the standard of care expected in the circumstances, and were therefore negligent in the research, development, design, manufacture, testing, distribution, sale and marketing of AFFF containing PFAS by, inter alia:

- (a) failing to undertake sufficient studies and testing to determine whether AFFF containing PFAS were safe for those using or exposed to them and whether they were suitable for their intended use in firefighting;
- (b) designing, manufacturing, producing, promoting, formulating, creating, developing, selling or distributing AFFF containing PFAS without thorough and adequate pre and post-market testing;
- (c) failing to adequately test AFFF containing PFAS to fully reveal the magnitude of the risks associated with their use and exposure, including, but not limited to, the increased risk of developing clinically significant disease, including PFAS Cancers and Illnesses;
- (d) failing to design and manufacture AFFF containing PFAS while ensuring that they are at least as safe and effective as other products on the market;
- (e) asserting that AFFF containing PFAS was safe and suitable for its intended use when, in fact, the Defendants knew or should have known that this was not the case;
- (f) failing to conduct adequate testing to determine the extent to which exposure to PFAS was likely to occur through inhalation, ingestion, application and absorption into the bodies of persons who used them, were in the vicinity of AFFF containing PFAS during their use, or entered the locations where AFFF containing PFAS was used or the areas near where it was used;
- (g) failing to conduct adequate testing to determine the extent to which the spray from AFFF containing PFAS was likely to drift, including their propensity to drift, the distance over which they were likely to drift, and the extent to which droplets of AFFF containing PFAS were likely land on or enter the bodies of those using them or others in the vicinity during or after use; and
- (h) failing to conduct adequate testing to determine the extent to which AFFF containing PFAS, when inhaled, ingested, applied or absorbed into the bodies of people who use them, who are in the vicinity during their use or who enter the locations where it was used or areas near

such locations, is likely to cause or contribute to clinically significant disease, including PFAS Cancers and Illnesses.

88. At all material times, the Defendants knew or ought to have known that exposure to AFFF containing PFAS causes clinically significant disease, including the PFAS Cancers and Illnesses, and therefore creates a dangerous and unreasonable risk of injury to the Plaintiff and Class Members. Furthermore, the Defendants knew or ought to have known that further testing and study was required in order to assess the safety of AFFF containing PFAS.

89. The AFFF containing PFAS was more dangerous than alternative firefighting formulations available. Such products can be made without PFAS or their dangerous precursor chemicals, and without posing an increased risk of harm to the Plaintiff and Class Members.

Negligence (Failure to Warn)

90. As the manufacturers, developers, distributors, labelers or importers of AFFF containing PFAS, the Defendants were in such a close and proximate relationship to the Plaintiff, and Class Members, as to owe them a duty of care. The Defendants caused AFFF containing PFAS to be introduced into the stream of commerce in Canada, and they knew that any damages or adverse effects related to AFFF containing PFAS would cause foreseeable injury to the Plaintiff and Class Members.

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

- (a) inform purchasers and users of AFFF containing PFAS, including the Canadian Armed Forces, civilian fire departments, and the Class Members, of the risks associated with the use or exposure to AFFF containing PFAS;
- (b) properly and appropriately amend labels of AFFF containing PFAS in a timely manner, to reflect the numerous studies and information available on the association between PFAS and clinically significant disease, including PFAS Cancers and Illnesses;
- (c) provide adequate instructions, guidance and safety measures to persons who could reasonably be expected to use or be exposed to AFFF containing PFAS;
- (d) provide directions for use that would have made it unlikely that AFFF containing PFAS would be inhaled, ingested, applied or absorbed into the body by persons who used them, were in the vicinity of it during their

use, or entered locations where AFFF containing PFAS were used or the areas near where AFFF containing PFAS were used;

- (e) warn that when inhaled, ingested, applied or absorbed into the bodies of persons using them, being in close proximity during their use, or entering locations where they were used or in areas near such locations, AFFF containing PFAS were likely to cause or contribute to clinically significant disease, including PFAS Cancers and Illnesses;
- (f) disclose to purchasers, users of AFFF containing PFAS and the general public the increased risks associated with the use of and exposure to AFFF containing PFAS, including, but not limited to, the increased risk of developing clinically significant disease, including PFAS Cancers and Illnesses;
- (g) adequately monitor, investigate, evaluate and follow-up on reports of potential risks, including PFAS Cancers and Illnesses, associated with AFFF containing PFAS;
- (h) provide adequate warnings about the increased risks, including PFAS Cancers and Illnesses, associated with AFFF containing PFAS;
- (i) after becoming aware of the increased risks associated with AFFF containing PFAS, including PFAS Cancers and Illnesses, to issue adequate warnings to alert the public;
- (j) direct that AFFF containing PFAS be used in a manner that would have made them unlikely to be inhaled, ingested, applied to or absorbed into the bodies of persons who used them, who were in the vicinity of it during their use, or who entered locations where AFFF containing PFAS were used or the areas near where they were used;
- (k) warn that when inhaled, ingested, applied to or absorbed into the bodies of persons who used them, were in close proximity during their use, or entered locations where AFFF containing PFAS were used or in areas near them, AFFF containing PFAS were likely to cause or contribute to clinically significant disease, including PFAS Cancers and Illnesses; and
- (l) to provide adequate warnings about the increased risks associated with their AFFF containing PFAS, including PFAS Cancers and Illnesses.

92. The Defendants breached the standard of care expected in the circumstances, and therefore were negligent in failing to take adequate and appropriate steps, in a

timely manner, to warn users, including the Plaintiff and Class Members, about the risks associated with use of or exposure to AFFF containing PFAS by, inter alia:

- (a) failing to inform the public of the risks associated with the use or exposure to AFFF containing PFAS;
- (b) failing to properly and appropriately amend labels of AFFF containing PFAS in a timely manner, to reflect the numerous studies available on the association between PFAS and PFAS Cancers and Illnesses;
- (c) failing to provide adequate instructions, guidance and safety measures to persons who could reasonably be expected to use or be exposed to AFFF containing PFAS;
- (d) failing provide directions for use that would have made it unlikely that AFFF containing PFAS would be inhaled, ingested, applied to or absorbed into the body by persons who used them, were in the vicinity of them during their use, or entered locations where AFFF containing PFAS were used or the areas near where they were used;
- (e) failing to warn that when inhaled, ingested, applied or absorbed into the bodies of persons using them, being in close proximity during their use, or entering locations where they was used or in areas near such locations, AFFF containing PFAS were likely to cause or contribute to clinically significant disease, including PFAS Cancers and Illnesses that was both permanent and cumulative, and that repeated exposures were likely to cause or contribute to clinically significant disease, including PFAS Cancers and Illnesses, that would develop after exposure;
- (f) failing to disclose to users and consumers of AFFF containing PFAS and the general public the increased risks associated with the use of and exposure to AFFF containing PFAS, including, but not limited to, the increased risk of developing clinically significant disease, including PFAS Cancers and Illnesses;
- (g) failing to adequately monitor, investigate, evaluate and follow-up on reports of potential risks, including PFAS Cancers and Illnesses, associated with AFFF containing PFAS;
- (h) failing to provide adequate warnings about the increased risks, including PFAS Cancers and Illnesses, associated with AFFF containing PFAS;

- (i) after becoming aware of the increased risks, including PFAS Cancers and Illnesses, associated with AFFF containing PFAS, failing to issue adequate warnings to alert the public;
- (j) failing to direct that AFFF containing PFAS be used in a manner that would have made them unlikely to be inhaled, ingested, applied or absorbed into the bodies of persons who used them, who were in the vicinity of them during their use, or who entered locations where they were used or the areas near where they were used; and
- (k) failing to warn that when inhaled, ingested, applied or absorbed into the bodies of persons who used them, were in close proximity during their use, or entered locations where they was used or in areas near them, AFFF containing PFAS were likely to cause or contribute to clinically significant disease, including PFAS Cancers and Illnesses, that was both permanent and cumulative, and that repeated exposures were likely to cause or contribute to clinically disease, including PFAS Cancers and Illnesses, to develop after exposure.

93. At no time did Defendants disclose to users of AFFF containing PFAS and the general public of the increased risks associated with exposure to AFFF containing PFAS, including, but not limited to the increased risk of developing PFAS Cancers and Illnesses. The Defendants knew or ought to have known that purchasers and users of AFFF containing PFAS as well as the general public were unaware of the risks and the magnitude of the risks caused by exposure to AFFF containing PFAS.

94. Despite the Defendants' ability and means to investigate, study, and test AFFF containing PFAS, and to provide adequate warnings of the risks associated with them, the Defendants failed to do so.

95. The Plaintiff and Class Members did not know the nature and extent of the injuries, including PFAS Cancers and Illnesses, that could result from the intended and foreseeable uses of or exposures to AFFF containing PFAS. They would not have allowed themselves to be subjected to exposure to AFFF containing PFAS had they known of the risks.

96. The injuries, harm, and losses suffered by the Plaintiff and Class Members were caused by the negligence of the Defendants, their servants and their agents.

97. The Plaintiff pleads and relies upon the provisions of the *Negligence Act*.

Unjust Enrichment

98. The Defendants, and each of them, have been unjustly enriched as a result of the conduct alleged above. The Plaintiff and Class Members have suffered a corresponding deprivation in the amount of the difference between the prices paid for AFFF containing PFAS and the prices which would have been paid in the absence of the Defendants' tortious acts.

99. Since the difference in price received by the Defendants resulted from the Defendants' tortious acts, there is and can be no juridical reason justifying the Defendants retaining any part of it, including at equity, under contract or pursuant to any statutory obligations.

Causation and Damages

100. As a result of the Defendants' negligence, the Plaintiff and Class Members have suffered and will continue to suffer loss and damage. Such loss and damage was foreseeable by the Defendants, and each of them. Particulars of the loss and damage suffered by the Plaintiff and class members which were caused or materially contributed to by the aforementioned acts of the Defendants include:

- Personal injury, including the PFAS Cancers and Illnesses;
- Mental injury upon learning that exposure to AFFF containing PFAS caused them to develop the PFAS Cancers and Illnesses;
- Special damages for medical expenses and out-of-pocket expenses, including cost of purchasing AFFF containing PFAS when they otherwise would not have done so had they been properly warned;
- Loss of both past and prospective income; and
- Cost of future care.

101. The Plaintiff and Class Members 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 lives of those who use or are exposed to AFFF containing PFAS in Canada.

102. In particular, punitive damages are justified because of the extensive research linking AFFF containing PFAS to PFAS Cancers and Illnesses, which occurred over decades, and the Defendants' wilful blindness or reckless disregard for these studies. An award of punitive damages would help deter the Defendants and others from similar conduct in the future.

103. This case raises issues of general deterrence. A punitive damage award in this case is necessary to express society's condemnation of conduct such as the Defendants', to advance public safety and to achieve the goal of both specific and general deterrence.

Disgorgement

104. Further, and in the alternative, the Plaintiff and Class Members plead the remedies of accounting and disgorgement of profits or revenues.

105. As a result of the Defendants' conduct described herein, the Plaintiff and Class Members have a legitimate interest in preventing the Defendants' profit-making activity and to have monetary relief assessed in an amount equal to the gross revenues earned by the Defendants, or the net income received by the Defendants or a percent of the proceeds from the sale of AFFF containing PFAS, as a result of the Defendants' conduct. As an expected and intended result of their unlawful conduct, the Defendants have profited and benefitted from sales of AFFF containing PFAS that would not have been made but for the unlawful conduct.

106. The Plaintiff pleads and rely upon the provisions of the *Court Order Interest Act*, RSBC 1996, c 79, as amended.

Conspiracy

107. The Defendants conspired with each other and with other companies involved in the sale of AFFF containing PFAS in Canada to increase profits from sales while failing to warn class members and others of the risk of AFFF containing PFAS. The predominant purpose of the conduct of the Defendants and their co-conspirators was to cause injury to the Plaintiff and similarly situated persons, namely in the form of the PFAS cancers and illnesses.

108. Further, or in the alternative, the conduct of the Defendants was unlawful, by virtue of being a breach of the duty to warn of the risks of AFFF containing PFAS, and the Defendants knew, or ought to have known in the circumstances, that injury and addiction to the Plaintiff and similarly situated persons would be likely to result.

109. The Plaintiff and Class Members' use and exposure to AFFF containing PFAS resulted in losses and damages.

110. Particulars of the loss and damage suffered by the Plaintiff and Class Members, which was caused or materially contributed to by Defendants' wrongful acts include:

- a) personal injury;

- b) special damages for medical expenses and out-of-pocket expenses;
- c) loss of both past and prospective income;
- d) cost of future care; and
- e) cost of purchasing the Defendants' products fueled by nicotine addiction.

Health Care Cost Recovery

111. The Plaintiff relies upon health and hospital insurance legislation in British Columbia and similar legislation elsewhere and claims health care costs incurred himself and by Class Members and paid by provincial and territorial governments as a result of the wrongdoing of the Defendants:

- a. On behalf of His Majesty the King in right of the Province of New Brunswick, the Plaintiff claims the cost of "entitled services" under *Health Services Act*, SNB 2014, c 112, ss 1 and 3 and General Regulation, NB Reg 84-115, s 2 and Schedule II.
- b. On behalf of the government of British Columbia, the Plaintiff claims the past and future cost of providing "health care services" under *Health Care Costs Recovery Act*, SBC 2008, c 27, ss 1-3 and 7 and *Health Care Costs Recovery Regulation*, BC Reg 397/2008, s 3.
- c. On behalf of His Majesty in right of Alberta and the Minister of Health of Saskatchewan, the Plaintiff claims the direct and indirect costs of past and future "health services" under *Crown's Right of Recovery Act*, SA 2009, c C-35, ss 1, 2(1) and 38 and *Crown's Right of Recovery Regulation*, Alta Reg 87/2012, s 3; and *The Health Administration Act*, RSS 1978, c H-0.0001, s 19.
- d. On behalf of the Minister of Health of Manitoba, the Plaintiff claims the past and future cost of "insured hospital, medical, and other services" under *The Health Services Insurance Act*, RSM 1987, c H35, ss 2, 97 and *The Medical Services Insurance Regulation*, Man Reg 49/93, s 1.
- e. On behalf of His Majesty in right of the Province of Nova Scotia, the Plaintiff claims the past and future cost of "insured hospital services", and other care, services, and benefits under *Health Services and Insurance Act*, RSNS 1989, c 197, ss 2 and 18.
- f. On behalf of the Government of Yukon, and the Ministers of Health of the Northwest Territories and Nunavut, the Plaintiff claims the cost of

providing "insured services", including in-patient and out-patient services under *Hospital Insurance Services Act*, RSY 2002, c 112, ss 1 and 10-11 and *Yukon Hospital Insurance Services Regulations*, YCO 1960/35, s 2; *Hospital Insurance and Health and Social Services Administration Act*, and RSNWT 1988, c T-3, ss 1 and 19-20 and *Hospital Insurance Regulations*, RRNWT 1990, c T-12, s 1.

- g. On behalf of the Ontario Health Insurance Plan, the province of Quebec, the Minister of Health and Wellness of Prince Edward Island, and the Crown in right of Newfoundland and Labrador, the Plaintiff claims the cost of "insured services" under *Health Insurance Act*, RSO 1990, c H.6, ss 1, 11.2, and 30-31 and General, RRO 1990, Reg 552; *Hospital Insurance Act*, CQLR c A-28, ss 1 and 10 and Regulation respecting the application of the *Hospital Insurance Act*, CQLR c A-28, r 1, s 3 and *Health Insurance Act*, CQLR A-29, ss 1, 3, and 18; *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8, ss 1 and 14 and General Regulations, PEI Reg EC539/63, s 1; and *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01, ss. 41-42 and 44, and *Hospital Insurance Regulations*, CNLR 742/96, s 2 and Schedule.

(collectively, the "Healthcare Cost Recovery Legislation")

Limitation Period

112. The Defendants willfully concealed their knowledge of the risk of PFAS to the Plaintiff and Class Members. The Plaintiff and Class Members rely on the doctrine of fraudulent concealment and *Pioneer Corp. v. Godfrey*.

113. In addition, the Plaintiff and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by actions or inactions of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until this action was filed.

114. The Plaintiff and Class Members rely on the doctrines of postponement and discoverability to postpone the running of the limitation period until 2023.

115. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8, 21(3). In the alternative, or in addition, the Plaintiff and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266.

Jurisdiction

116. The Plaintiff relies on ss. 13, 7, and 10 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 and pleads that there is a real and substantial connection between the subject matter of this action and the Province of British Columbia for the following reasons:

- The claim concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- The claim concerns a business carried on in British Columbia;
- The Defendants sold PFAS and AFFF containing PFAS in British Columbia;
- The Defendants conspired with each other to misrepresent to the public the harms associated with PFAS and AFFF containing PFAS, with corresponding harm and loss sustained by persons in British Columbia;
- The Plaintiff resides in British Columbia; and
- The Plaintiff's damages were sustained in British Columbia.

Form 11 (Rule4-5(2))

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

The Plaintiff claims the right to serve this pleading on the Defendants outside British Columbia on the ground that:

The Plaintiff has at all material times been a resident of British Columbia and has suffered loss in British Columbia. The Supreme Court of British Columbia has jurisdiction with respect to this matter and the Plaintiff pleads the *Court Jurisdiction and Proceedings Transfer Act*, 2003, SBC Chapter 28 and amendments thereto.

Plaintiff's address for service:	RICE HARBUT ELLIOTT LLP Barristers and Solicitors 820 - 980 Howe Street Vancouver, BC V6Z 0C8
Fax number address for service (if any):	(604) 682-0587
E-mail address for service (if any):	<u>service@rhelaw.com</u>

Date: 21/December/2023


 Signature of ☐ plaintiff
☒ lawyer for plaintiff
 Anthony Leoni

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A claim for negligence and failure to warn resulting in illnesses suffered by people who used or were exposed to AFFF containing PFAS, with injury, loss and damages to the Plaintiff and a class of similarly situated persons resident in Canada.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50;
2. *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27 and equivalent Health Care Cost Legislation;
3. *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28