

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

DAVID BACK, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Cause No.: 18SL-CC03530
	)	
BAYER CROPSCIENCE LP, <i>et al.</i> ,	)	Div. No.: 18
	)	
Defendants.	)	
	)	

**DEFENDANTS’ EMERGENCY MOTION FOR LIMITED ADDITIONAL DISCOVERY  
RELATED TO DR. DAVID O. CARPENTER**

Defendants Monsanto Company (“New Monsanto”), Solutia Inc. (“Solutia”), Pharmacia LLC (“Pharmacia” or “Old Monsanto”), and Pfizer, Inc. (collectively “Defendants” or “Monsanto”) seek an emergency order for leave to engage in additional limited discovery regarding the disciplinary investigation by the State University of New York at Albany (“SUNY Albany” or the “University”) of Dr. David O. Carpenter related to his research and the funding sources for that research. The University’s disciplinary investigation was first made known to Defendants via an article published on February 5, 2023 in the Albany Union Times.

Dr. Carpenter is a critical witness in this case. Plaintiffs disclosed Dr. Carpenter to testify on “general PCB toxicity, alleged human health effects of PCB exposures on members of the Tribe, and medical monitoring or screening tests he asserts are reasonably medically necessary as a result of those exposures.” *See* Ex. 1, Plfs’ Suppl. Disclosure of Expert Witnesses. According to Plaintiffs, “Carpenter is a highly-qualified, widely-published, world-renowned public health physician who is an expert on the impacts of Monsanto’s polychlorinated biphenyls (“PCBs”) on public health in general, and on this Tribe in particular.” *See* Ex. 2, Plfs’ Opp’n to Defs’ Motion to Exclude Carpenter at 1. Dr. Carpenter has “personally authored or co-authored 17 academic

research papers on the public health impacts of Monsanto's products on *this Tribe*." *Id.* at 2. (emphasis added). Dr. Carpenter is expected to play an essential role in Plaintiffs' case-in-chief, as he is the sole witness they have disclosed to opine in support of certain medical conditions and their claim for medical monitoring damages. Without him, the Tribe's claims for past medical damages and medical monitoring damages fail.

Recent press coverage reveals Dr. Carpenter's expert work in PCB litigation has resulted in a disciplinary investigation by SUNY Albany. On February 5, 2023, the Albany Times Union published an article on Carpenter titled "*Noted PCB Researcher on 'Alternate Assignment'*". Ex. 3 ("Albany Times Union Article"). Defendants learned via this article, for the first time,<sup>1</sup> that Dr. Carpenter is the subject of an "ongoing disciplinary investigation", that he has been placed on "alternate assignment" from the University and that he has been "placed on restricted duties" as the University investigates "his extensive work testifying as an expert witness in toxic pollution cases." *Id.* at 2-3. According to the article, Dr. Carpenter was instructed "not to visit any campuses and to perform his duties from home." *Id.* at 2. Dr. Carpenter also reported in the article that the University "came to my office and emptied the three file cabinets for legal activity and carried it away." *Id.* at 4. The particulars of the University's disciplinary investigation of Dr. Carpenter, that Defendants have just been made aware of through the Albany Times Union article, is critically material to the jury's determination of Dr. Carpenter's credibility and bias.

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<sup>1</sup> By way of background, pursuant to the New York Freedom of Information Law, Article 6, Sections 84-90 ("FOIL"), on February 24, 2022, Defendants requested from SUNY Albany copies of documents related to funding, payments, grants, or scholarships received by Dr. Carpenter, his research account, staff, students, or researchers in connection with any consulting services, expert testimony related to PCBs provided by Dr. Carpenter. *See* Ex. 9. Despite documents provided by SUNY Albany in response to this FOIL request in the fall of 2022, Defendants were not made aware of the disciplinary investigation into Dr. Carpenter that began nine months prior to the publication of the article, until February 5, 2023.

Among other things, the article refers to the testimony Dr. Carpenter regularly offers to bolster his own credibility as an expert in PCB litigation, namely “that he notes nearly all of the money he receives as an expert witness is funneled back to the university to assist students, staff and research programs.” See Ex. 3, Albany Times Union Article, at 5; see also, Ex. 4, Trial Testimony of D. Carpenter, *Allison v. Monsanto Co., et al.*, Cause No. 18-2-26074-4 SEA, Sup. Ct. King County, Sept. 19, 2022 (“Carpenter *Allison* Tr.”) at 5159:3-17 (“Q: What do you do with the money you make from testifying in court cases? A: I don’t accept funds myself except under extremely rare circumstances....”). In several cases against Old Monsanto, Carpenter has routinely testified that he does not take money for his PCB-related expert witness work; rather, the money goes to various aspects of SUNY Albany or gets paid directly to his students. See Ex. 5, Trial Testimony of D. Carpenter, *Soley v. Monsanto Co., et al.*, Cause No. 18-2-23255-4 SEA, Sup. Ct. King County, May 18, 2022 (“Carpenter *Soley* Tr.”) at 2222:2-8 (“Q: The first thing I want to ask is, compensation, are you actually being compensated for your time here today? A: I charge for my time, but I don’t accept any of those funds personally, with very, very rare exceptions. Q: What do you do with the compensation for your time? A: That’s paid directly to my students and to my staff. My research productivity is dependent on having people to work with me on thing[s] that I care about. So students and staff – I send the bill to whomever and ask that the funds be paid directly to my students and staff as they need it.”); Ex. 6, Depo. of D. Carpenter, *Back v. Monsanto Co., et al.*, Cause No. 18SL-CC03530, Apr. 26, 2022, (“Carpenter *Back* Depo.”) at 61:5-63:3. According to the Albany Times Union article, Carpenter portrays himself as a “favorite of the jurors . . . because of the fact [he] wasn’t taking money” for himself. However, this disciplinary investigation by SUNY Albany calls into question the nature of Dr. Carpenter’s expert witness fees and how those funds are used.

For decades before this litigation began, Carpenter conducted research on the Saint Regis Mohawk Tribe. His research involves health studies on the Plaintiffs, the Saint Regis Mohawk Tribe, including some of the human health endpoints Plaintiffs allege in this matter. Despite the funding Carpenter has received for expert litigation work, that he has directly applied to his research endeavors, he has failed to disclose this to the scientific journals in which his research is published. *See* Ex. 7, Depo. of D. Carpenter, *City of Seattle v. Monsanto Company, et al.*, Case No. 2:16-CV-00107-RAJ, May 16, 2022, (“Carpenter *Seattle* Depo.”) at 145:19-147:18 (testifying that pursuant to journal disclosure rules, expert witness consulting work should be disclosed, however, he does not feel that his expert witness work poses any conflict). The fact that the article shows Dr. Carpenter’s PCB research has been funded by plaintiffs’ lawyers and Carpenter’s historical failure to disclose conflicts continues to call into question the credibility of his opinions. However, the particulars of the University’s newly-discovered disciplinary investigation of Dr. Carpenter, that has already resulted in him being restricted from visiting any University campuses, is critically important to the jury’s determination of witness credibility and bias. Defendants should be afforded the opportunity to discover the full extent of Dr. Carpenter’s conflicts and any potential disciplinary action being taken by SUNY Albany.

On April 26, 2022, Defendants deposed Dr. Carpenter regarding his opinions and conclusions in this case related to eight health endpoints and Plaintiffs’ proposed medical monitoring program. During that deposition, Dr. Carpenter was asked about payments he has received from his expert work. He testified that since 2015 he has given any funds he received for expert litigation work to the Research Foundation of SUNY or to individual students and staff. *See* Ex. 6, Carpenter *Back* Depo. at 61:5-62:25. Because Defendants did not know about any disciplinary investigation of Dr. Carpenter by the University, Defendants did not have the

opportunity to inquire about the investigation at that time. Since his deposition in this case, Dr. Carpenter has provided sworn trial testimony in two cases against Monsanto and sworn deposition testimony in two cases against Monsanto—never once mentioning the disciplinary investigation the University was conducting into his research and/or funding that lead to him to be placed on restricted duties and instructed not to visit any campuses. Thus, to date, Defendants have not have an opportunity to inquire about the investigation. *See*, Ex. 7, Carpenter *Seattle* Depo.; Ex. 5, Carpenter *Soley* Tr.; Ex. 8, Depo. of D. Carpenter, *Evard v. Monsanto*, Case No.019-L-011574, Cir. Ct. of Cook County, Illinois, July 21, 2022; Ex. 4, Carpenter *Allison* Tr.

The Albany Times Union article reveals a new discovery issue that Defendants were not previously aware of and did not have the opportunity to develop prior to the close of discovery. The newly reported investigation and action by the University raises questions regarding various issues, including but not limited to: (1) the independence of Dr. Carpenter’s University-based PCB research upon which he relies, since it appears to be funded, at least in part, by plaintiffs’ attorneys who have a financial interest in the case (*see*, Ex. 7, Carpenter *Seattle* Depo., 77:7-11 (“So I’m not saying that all industry studies, industry-sponsored studies are wrong, but I’m saying that there’s a great potential for a conflict of interest in industry-funded studies.”)); (2) Dr. Carpenter’s forthrightness in recent sworn testimony where he was questioned about his expert fees and use of this money and never mentioned the ongoing University investigation; and (3) whether his published research on which he relies or has used to bolster his credibility as an expert potentially violates the policies of the journals where it was published since most scientific journals require that financial contributions, particularly those that could pose a conflict or raise questions about bias, be disclosed. Accordingly, Defendants now respectfully request time to conduct additional discovery, including but not limited to written discovery and depositions, related to the

University's disciplinary investigation regarding Dr. Carpenter's PCB research and funding sources, and the disposition of payments Dr. Carpenter has received for his expert work in PCB litigation. *See Doe v. Young*, 664 F.3d 727, 732 (8th Cir. 2011) (the district court reopened discovery for the limited purpose requested—to allow the depositions of undisclosed witnesses that were only learned about through the corporate designee deposition); *see also Watt v. All Clear Bus. Sols., LLC*, 840 F. Supp. 2d 324, 326 (D.D.C. 2012) (“[W]hether to ... reopen discovery is committed to the sound discretion of the trial court”). Dr. Carpenter's credibility and potential biases are key issues in this case, as are potential conflicts of interests related to his PCB research, and Defendants should be permitted to conduct this limited discovery of an expert witness critical to Plaintiffs' case.

Respectfully submitted,

**SHOOK, HARDY & BACON L.L.P.**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served electronically by the Court's electronic filing system and emailed to Plaintiffs' counsel of record this 7th day of February, 2023.

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