

FAQ on the lawsuit over fish oil supplements

A. WHAT ARE PCBs, and HOW HARMFUL ARE THEY?

- 1. What are PCBs? Polychlorinated biphenyl (PCB compounds) are manmade industrial chemicals with long track records as some of the worst environmental pollutants and human health threats. Congress banned their manufacture back in 1979, but PCBs are extremely persistent (they don't break down), and they accumulate up the food chain.
- 2. **How do they harm people?** They've been officially recognized for 20 years as causing both cancer and reproductive toxicity, and studies show they are endocrine disruptors (for example, changing some fetuses from male to female in animal studies). These gender-bending properties of PCBs affect both physical characteristics and behavior.
- 3. **How much is too much?** We know for sure that more is worse than less, and our tests show that some fish oil supplements have many times as much PCBs as others. California has set a daily intake that represents "no significant risk" of PCBs causing cancer, which some of these products exceed by up to a factor of 10. But there is <u>no</u> official safety level for PCBs causing reproductive toxicity. So the only guideline consumers can follow is that less is safer.

B. WHAT CAN PEOPLE DO TO PROTECT THEMSELVES?

- 1. What should consumers do with this news? Since less is safer, and we know some omega-3 supplements have much lower levels of PCBs than others, consumers can pick the ones with low levels. Or, they could switch to omega-3 supplements that are made from plant material (like flax oil) instead of fish oil. We tested some plant-based supplements and found no detectable PCBs in them.
- 2. Which products should a consumer choose, then? We think consumers will want to choose products that have been tested and that show the lowest levels of PCB contamination. Our initial tests have shown you can cut your exposure to very small fractions of the PCB levels in the products with the highest levels tested so far. More tests are being carried out, since our results cover only 10 of more than 100 fish oil products on the market, and we have no way of knowing whether the ones we tested are higher or lower than others until we test them.

In our initial tests of 10 products, those with the lowest overall levels of PCBs at the recommended daily dose were, in order, Solgar Norwegian Cod Liver Oil, TwinLab Norwegian Cod Liver Oil, GNC Liquid

Norwegian Cod Liver Oil, and TwinLab Emulsified Norwegian Cod Liver Oil.

After weighting for how toxic some of the contaminants are (the ones for which weighting factors exist), the products that ranked the lowest for toxicity were, in order, TwinLab Norwegian Cod Liver Oil, TwinLab Emulsified Norwegian Cod Liver Oil, Solar 100% Pure Norwegian Shark Liver Oil Complex, and Nature Made Odorless Fish Oil.

- 3. What about products you haven't tested yet? There are over 100 fish oil supplement products on the market, and we have no way of knowing if some have more or less PCB contamination than the ones we have tested. We will be doing more testing and more analysis. We also plan to ask the manufacturers to commit to doing meaningful testing themselves (and making the results public so consumers can make informed choices). In the meantime, these results give consumers a way to make comparisons among these 10 products, with more information to come.
- 4. How did you choose these products/pick these companies? The industry has known about PCBs in fish oil for a long time, and a recent survey of 75 companies by the Environmental Defense Fund showed some companies being less careful about PCBs than others. We chose some of those. But these are just the ones in the first round of testing. Without more testing, we can't know whether this group includes the worst in the market (or the best).

C. WHAT DO THE CHARTS MEAN?

- 1. Why two charts instead of one? There are two basic ways of measuring PCBs. Unfortunately, neither gives a complete picture; they're just the best measurements that science has right now.
- 2. **What's being measured?** The first chart shows the <u>amount</u> of exposure, as measured under California law (i.e., looking at all 209 of the separate compounds or "congeners" in the PCB chemical family). The second shows the toxicity, in terms of its equivalence to being exposed to dioxin.
- 3. What's the difference between them? As both a carcinogen and a reproductive toxin, some of the 209 PCB congeners act in the same way that dioxin does. The World Health Organization has set factors for those PCB congeners that measure their equivalence, in toxicity terms, to the very most toxic dioxin compound (2,3,7,8 TCDD). But only 12 PCB congeners can be counted this way, because those 12 are the only ones that dioxin-equivalence factors have been calculated for. So the second measurement is precise but incomplete.
- 4. Which one should consumers look at? Have to look at both, knowing they measure PCBs differently one isn't necessarily better than the other. A good product would show very low scores on both. And manufacturers should provide information on both.

D. WHY IS THIS ILLEGAL?

1. What's the basis for your lawsuit? California law requires that consumers be warned when they're exposed to chemicals that are known to cause cancer or birth defects, and PCBs cause both. The point of this

- right-to-know law, known as Proposition 65, is to let people make informed choices about what they do and don't want to be exposed to.
- 2. What have Prop. 65 lawsuits accomplished in the past? This law has been in effect for over 20 years, and over and over it has spotlighted toxic chemicals in products that people didn't know were there, everything from playground structures to over-the-counter drugs. Almost always, Prop. 65 lawsuits have resulted in those toxic chemicals being taken out of the products altogether, or else reduced down to a fixed level of safety. And since California is one-sixth of the U.S. economy, those changes have quietly been made in consumer products nationwide.
- 3. What should these companies be doing? They need to do the homework about the level of PCBs in their own products that California law required as far back as 1989. And either they need to give their customers clear warnings, or else get the PCB levels down low enough so warnings aren't required.
- **4.** What about companies you haven't sued? We know this is only a fraction of the market, and we'll keep testing to see what we find. But we expect that the whole industry will start to take the PCBs problem a lot more seriously, now that there's a serious legal threat.
- 5. What about the FDA? Doesn't it have standards for PCB contamination? Unfortunately no, not across the board and not in health supplements like these. If it did, Prop. 65 wouldn't have been necessary. Prop. 65 was passed in large part to fill in the holes in the federal safety net and it's found a lot of them in the last 22 years.

E. WHAT'S THE PURPOSE OF BRINGING THIS LAWSUIT?

- 1. What are you after? What we want is for this entire industry to get serious about keeping PCBs out of fish oil supplements. We've shown the problem, and the law says it's their responsibility to solve it or else start warning their customers. In the meantime, we hope consumers will make smart choices to protect themselves, using the information we already have and the information that will be coming.
- 2. Why did you sue now, instead of doing more tests on more products? We could have waited to test 100 products (and spend \$100,000), but these first results were serious enough that we decided to start the legal case now, and try to get the companies to commit to doing meaningful testing themselves (and making the results public so consumers can make informed choices). In our experience, we've also found that once a legal case starts, and consumers want to know how their favorite brands stack up, companies start cleaning up and testing on their own.
- 3. **Is this lawsuit a surprise to the companies you're suing?** No, we officially put them on notice six months ago.
- 4. Why are you suing even those companies whose products have the lowest levels of PCBs on your tests? They still violate Proposition 65. PCBs are both carcinogens and reproductive toxins. Some of our tested products are below the warning level required for carcinogens, but not for reproductive toxins. The companies will have to show the science on PCBs' reproductive effects, and prove there's a level below which there's no reproductive harm, in order to avoid Prop. 65 liability. This is just good

- sense: if the company knows it's a chemical that causes birth defects, and knows it's exposing you to that chemical, then Prop. 65 says the company itself should know what level is safe.
- 5. I've heard fish oils are really good for you. Aren't you going to scare people away from a helpful product? We're saying people shouldn't have to be exposed to unsafe levels of a highly toxic chemical in order to get the health benefits they want and our first round of test results shows that some products are vastly better than others in terms of PCB contamination. Consumers should be told which ones have the lowest amounts of PCBs, and they should be able to buy those.

F. WHO ARE YOU?

- 1. Who are Chris Manthey and Benson Chiles? Dedicated environmentalists who have been following the problems with the fish meal and fish oil industry for years. The industry harvests enormous amounts of small fish, like Omega Protein does with menhaden in Chesapeake Bay, and uses them to make both fish oil and fish meal for animal feed. The fish oil for human consumption is at least somewhat treated to cut down on PCBs, but the fish oil and the fish meal that go into animal feed aren't treated at all, so PCB levels tend to be much higher. People wind up eating the beef and chicken and pork that is raised on fish-based feed, and are being exposed to PCBs and other contaminants they don't even know about.
- 2. What is the Mateel Environmental Justice Foundation? A non-profit corporation dedicated to consumer rights and human health protection, among other goals, based in Eureka CA. Mateel has brought many successful lawsuits under Proposition 65, as well as other laws.
- 3. Why are you allowed to sue? Have you gotten cancer from PCBs? Proposition 65 can be enforced by any citizen (after giving proper notice to law enforcement authorities). The Prop. 65 violations that this case is about are the companies' failure to warn the public about the PCBs in their fish oil supplements and those failures have already happened. The idea of warnings is to give people a chance to avoid certain chemical risks now, instead of, for example, waiting 20 or 30 years to get cancer from the chemical and then trying to sue for damages.