

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.:

DR. DARREN MASIER,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA STATE)
 UNIVERSITY,)
)
 Expected Adverse Party.)

**PETITION FOR RELIEF
PURSUANT TO RULE 27(a)**

NOW COMES Petitioner, pursuant to Rule 27(a) of the North Carolina Rules of Civil Procedure, and alleges and says as follows:

INTRODUCTION

1. On November 16, 2023, North Carolina State University (“NCSU”) closed Poe Hall due to suspected environmental contamination and toxic, dangerous conditions. The source of the environmental contamination was believed to be the heating, ventilation and air conditioning (“HVAC”) systems in Poe Hall. Petitioner, Dr. Darren Masier, a former student and graduate assistant with an office in Poe Hall, has terminal cancer, believed to be related to the environmental contamination within Poe Hall. Petitioner has reason to believe that evidence underlying his claims for personal injuries arising from exposure to environmental contamination may have been destroyed or altered by NCSU. Thus, Petitioner moves for relief under Rule 27(a).

PETITIONER

2. Petitioner, Dr. Darren Masier, is a resident of the Town of Cary, Wake County, North Carolina.

3. Dr. Masier received his Master of Science in Human Resource Development in 2010 from NCSU and his Doctor of Education in Workforce Training and Development in 2013 from NCSU.

4. Between 2009 and 2013, Dr. Masier was a graduate student and was employed by NCSU as a Graduate Assistant in the College of Education.

5. Dr. Masier worked in an office in Poe Hall and took classes in Poe Hall while he was a graduate student.

6. Dr. Masier has Acute Myeloid Leukemia.

7. Tragically, Dr. Masier's cancer is terminal, and he has been told by his doctors that his death is imminent.

EXPECTED ADVERSE PARTY

8. Expected Adverse Party North Carolina State University (hereinafter "NCSU") is a public university "dedicated to the service of North Carolina and its people" pursuant to N.C. Gen. Stat. § 116-1(b).

9. NCSU is located in Raleigh, Wake County, North Carolina.

10. NCSU has an annual enrollment of over 35,000 students and employs over 9,000 faculty and staff.

11. Poe Hall is located on the NCSU campus and was constructed around 1971. The seven-story building housed NCSU's Department of Psychology and College of Education until its closure on November 17, 2023.

12. In the fall of 2023, due to concerns and complaints by faculty and staff with offices in Poe Hall, environmental testing was undertaken of dust and air from the HVAC systems that revealed the presence of polychlorinated biphenyls ("PCBs"). PCB exposure is linked to serious health problems, including cancer.

FACTS

Dr. Masier's PCB exposure

13. Between 2009 and 2013, Dr. Masier spent approximately thirty hours per week or more in Poe Hall in various offices and classrooms.

14. During his time at NCSU and until 2022, Dr. Masier was very healthy. He is a non-smoker, former collegiate soccer player and triathlete.

15. In 2022, Dr. Masier began experiencing unusual health problems and was diagnosed with Acute Myeloid Leukemia in 2023.

16. Since his cancer diagnosis, Dr. Masier has received a bone marrow transplant and suffered significant organ damage related to aggressive chemotherapy treatments.

17. In November 2023, Dr. Masier learned that Poe Hall was closed by NCSU due to the presence of dangerous levels of PCBs in the building.

18. PCBs were banned in the United States in 1979. Prior to the ban, they were widely used in industrial and commercial applications.

19. At the time of the construction of Poe Hall, around 1971, PCBs were widely used in building materials, such as in paint, caulk and mastics.

20. PCBs are considered probable human carcinogens. In addition to causing cancer, PCB exposure can cause serious adverse health effects on the immune system, reproductive system, nervous system and endocrine system.

21. Dr. Masier has reason to believe that his cancer diagnosis is related to PCB exposure. Dr. Masier is not a smoker.

22. Dr. Masier retained undersigned counsel to investigate and prosecute legal claims relating to his exposure to PCBs during his tenure at NCSU.

NCSU's closure of Poe Hall

23. On November 16, 2023, NCSU announced that it was closing Poe Hall due to environmental testing revealing the presence of PCBs. NCSU undertook such testing

in response to occupants' concerns about the air quality in Poe Hall and the high numbers of faculty and staff diagnosed with serious illness including cancer.

24. At that time, the HVAC systems within Poe Hall were shut down; however, bathroom exhaust fans remained on and in use.

25. Upon information and belief, there are four HVAC circulation zones within Poe Hall and six air handling units.

26. At the time of the closure of Poe Hall, over 400 faculty, staff and graduate students had offices there. Additionally, 230 classes for more than 4,000 students met in Poe Hall.

27. After the closure of Poe Hall due to PCB contamination, NCSU undertook additional environmental testing and contracted with Geosyntec Consultants to complete such additional testing on or around December 7, 2023.

28. According to a bulletin dated December 7, 2023, signed by Chancellor Randy Woodson, Geosyntec Consultants was to "provide guidance to allow individuals limited access to the building to retrieve belongings and perform critical maintenance projects."

29. According to a subsequent bulletin dated December 18, 2023, co-signed by Executive Vice Chancellor and Provost Warwick Arden and Executive Vice Chancellor for Finance and Administration Charles Maimone, previous occupants of Poe Hall were instructed to retrieve materials, like textbooks and laptops, but to clean them off with Clorox wipes.

30. On February 8, 2024, Geosyntec Consultants released a 183 page "Indoor Environmental Investigation Report – Initial Phase."

31. Geosyntec Consultants' initial testing occurred on December 20, 21, and 22, 2023. At that time, Geosyntec sampled indoor and outdoor air samples (14 indoor and one outdoor air sample) and surface wipe samples (67 wipe samples).

32. NCSU released sampling results showing that samples from the 3rd floor of Poe Hall indicated the presence of PCBs at levels well above Environmental Protection

Agency standards for building materials (50 ppm for insulation and other solid materials and 10 ug/ cm² for non-porous structures in “high occupancy areas”).

33. Samples taken on November 7, 2023, from the 3rd floor indicated PCB contamination, Arochlor-1262 at 194,000 ppm. Another sample taken on December 20-21, 2023, from the 3rd floor indicated PCB contamination, Arochlor-1262 at 74.6 ppm.

34. The source(s) of PCBs in Poe Hall are not publicly known; however, at the time of Poe Hall’s construction, PCBs were widely used in plasticizer applications in building materials, including caulking, glazing, sealants, flooring adhesives and spray-on insulation.

35. Where PCBs and PCB-containing products are used in building materials, indoor air contamination from off-gassing is inevitable. Because PCBs continue to be released from building materials for decades and persist in the environment for even longer, indoor air concentrations of PCBs increase almost indefinitely, making the indoor environment progressively more hazardous over time.

36. PCBs can also volatilize when disturbed during renovation or building repairs.

37. Upon information and belief, repairs and renovations were regular occurrences at Poe Hall, particularly during the years that Petitioner spent time in Poe Hall.

38. PCBs are highly toxic and bio-accumulative in humans. Exposure to even small amounts of PCBs are known to increase the risk of cancer, and can cause serious adverse health effects on the immune system, reproductive system, nervous system and endocrine system.

Petitioner’s Attempts to Conduct Inspection and Requests to Preserve Evidence

39. It is the common custom and practice for pending personal injury claims to be the subject of a mutually agreed upon inspection which occurs prior to the

commencement of litigation. This is the common custom and practice in personal injury cases, including personal injury cases arising from exposure to environmental hazards.

40. Counsel for petitioner has worked diligently to reach an agreement with NCSU to conduct such an inspection; however, NCSU has denied petitioner such opportunity to conduct an inspection.

41. On January 22, 2024, Petitioner submitted a public records request to NCSU for documents relating to the mechanical drawings of Poe Hall. NCSU immediately responded that the documents requested were not public information.

42. On February 8, 2024, NCSU released the report of sampling conducted by Geosyntec Consultants on December 20 and 21, 2023, with the HVAC systems turned off. The report confirmed the presence of PCBs in Poe Hall, including on the 3rd floor where Petitioner studied and worked from 2009 through 2013. The report suggested that prior to turning the HVAC system on, portions of the mechanical system should be replaced or encapsulated.

43. On February 9, 2024, counsel for Petitioner sent NCSU a letter of representation and spoliation letter requesting that NCSU not alter or otherwise modify evidence inside Poe Hall.

44. On February 21, 2024, counsel for Petitioner sent a written request to NCSU for written assurance that NCSU would not alter evidence within Poe Hall and requested access to the building for inspection. Counsel for Petitioner and NCSU discussed a mutually agreeable inspection protocol.

45. NCSU is aware through sources including media coverage that there are hundreds of potential claimants who studied and/or worked in Poe Hall who have cancer or other illnesses related to PCB exposure.

46. The preservation and discovery of evidence relating to potential claimants' exposure is critical to their diagnosis and health treatment, and to the preservation of potential legal claims they have against the manufacturer of PCBs, against those who installed or maintained materials containing PCBs and against those who caused, enabled or contributed to PCB exposure in Poe Hall.

Petition for Relief pursuant to Rule 27(a)

47. At this time, Petitioner has not filed a lawsuit, but he expects he, or his estate, will be a party in a claim for personal injuries against NCSU arising from PCB exposure he was subjected to in Poe Hall.

48. The subject matter of the expected action surrounds the personal injuries Petitioner has suffered which are believed to be a result of PCB exposure in Poe Hall.

49. Petitioner desires to perpetuate testimony and evidence from NCSU regarding the environmental conditions of Poe Hall that Petitioner was exposed to and any modifications made since Poe Hall's closure in November 2023 that may have impacted the environmental status as it existed during Petitioner's tenure at NCSU.

50. Petitioner seeks to perpetuate testimony through deposition pursuant to Rule 30(b)(6) of NCSU regarding the environmental conditions within Poe Hall, including any modifications made to Poe Hall since its closure in November 2023.

51. Petitioner further seeks access and entry to Poe Hall to conduct independent environmental testing of air and surfaces in Poe Hall to accurately determine the level of PCB contamination and/or other environmental contamination as it existed during Petitioner's tenure at NCSU. Petitioner directs the Court to the affidavits attached hereto indicating that testing completed to this point is inadequate and does not accurately reflect the complete environmental conditions of Poe Hall as they existed during the relevant time period.

52. Petitioner has reason to believe that the HVAC systems and filtration systems have been modified since Poe Hall's closure in November 2023. Petitioner and his retained experts and/or representatives seek access to Poe Hall pursuant to Rule 34(a) of the North Carolina Rules of Civil Procedure in order to conduct environmental testing of the air and surfaces in order to accurately determine the levels of PCB present in Poe Hall prior to its closure.

53. A determination of accurate levels of PCBs that existed under conditions similar to those that existed during Petitioner's tenure at NCSU will allow Petitioner to

evaluate the health connection between his PCB exposure and cancer diagnosis. This will allow Petitioner to seek redress against any party who may have wrongfully exposed him to environmental toxins leading to his injuries and potential death.

54. Petitioner further requests that the time period contained in Rule 27(a)(2) be shortened from 20 days to 48 hours for the following reasons:

- i. Petitioner has reason to believe that NCSU has, or is planning to, turn the HVAC systems back on in Poe Hall; and
- ii. Petitioner and Petitioner's retained experts believe that this may dissipate PCB levels thus despoiling evidence critical to Petitioner's claims.

55. The perpetuation of such testimony will prevent a failure and/or delay of justice.

56. Petitioner directs the Court to the affidavits submitted herewith regarding modifications of Poe Hall since its closure in November 2023 and potentially despoiled evidence. These affidavits are submitted under seal pursuant to Consent Protective Orders entered in a worker's compensation claim (IC No. 24-001404).

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray:

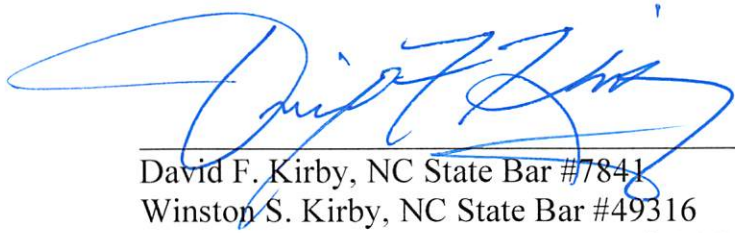
1. That NCSU appear on Thursday, April 25, 2024, in this Court and show cause why an order should not be issued allowing Petitioner to take a deposition pursuant to Rule 30(b)(6) of NCSU regarding the environmental status of Poe Hall including any modifications made since its closure in November 2023;
2. That NCSU not alter, modify or otherwise change the environmental conditions in Poe Hall until Petitioner has an opportunity to be heard on the instant Petition;
3. That Petitioner and its retained experts be permitted to enter upon the premises of Poe Hall for the purpose of conducting an inspection, obtaining air and

surface samples and to conduct environmental testing pursuant to Rule 34(a) of the North Carolina Rules of Civil Procedure; and

4. For any such other relief the Court deems appropriate.

This the 27th day of April, 2024.

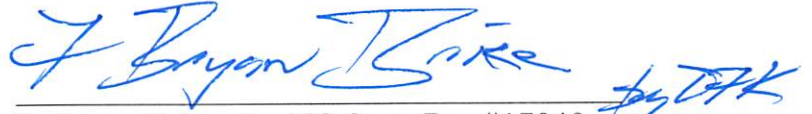
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NORTH CAROLINA

WAKE COUNTY

VERIFICATION

I, Dr. Darren Masier, being first duly sworn deposes and says that he is the Petitioner in the above-captioned matter, that he has read the foregoing *Petition for Relief Pursuant to Rule 27(a)* and knows the contents thereof, that the same is true of his own knowledge except as to those matters and things stated therein upon information and belief, and that, as to those, he believes them to be true.

This the 23rd day of April 2024.



Dr. Darren Masier

G.S. § 10B-41 NOTARIAL CERTIFICATE FOR
ACKNOWLEDGMENT

Wake County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Dr. Darren Masier
Name(s) of principal(s)

Date: April 23, 2024



Jeremy L. Best
Official Signature of Notary

Jeremy L. Best, Notary Public
Notary's printed or typed name

My commission expires: 8/11/2024

I signed this notarial certificate on April 23, 2024 according to the emergency video notarization requirements contained in G.S. 10B-25.
Date

Notary Public location during video notarization: Wake County
Stated physical location of principal during video notarization: Wake County

OPTIONAL

This certificate is attached to a _____, signed by _____
Title/Type of Document Name of Principal Signer(s)

on _____, and includes _____ pages.
Date # of pages