

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re	:	
"AGENT ORANGE"	:	
Product Liability Litigation	:	MDL No. 381 (All cases)

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EXHIBITS TO MEMORANDUM OF DEFENDANT HERCULES
INCORPORATED IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT ON THE GOVERNMENT CONTRACT
DEFENSE

VOLUME I

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FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JAMES M. ADKINS,)
Administrator of the)
ESTATE OF RALPH E. ADKINS,)
Deceased, et. al.,)

Plaintiffs,)

vs.)

MONSANTO COMPANY, a)
Delaware Corporation,)

Defendant.)

WOODROW BROWN, et. al.,)

Plaintiffs,)

vs.)

MONSANTO COMPANY, a)
Delaware Corporation,)

Defendant.)

LETHA W. CUNNINGHAM,)
Administratrix of the)
ESTATE OF CECIL BLAND)
CUNNINGHAM, Deceased,)
et. al.,)

Plaintiffs,)

vs.)

MONSANTO COMPANY, a)
Delaware Corporation,)

Defendant.)

RECEIVED JUN 24 1983

CIVIL ACTION NO. 81-2098

CIVIL ACTION NO. 81-2239

CIVIL ACTION NO. 81-2504

Evidence deposition of FRANK CALKINS
taken on behalf of the plaintiffs.

JAMES MAY REPORTING SERVICE

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EDWARDSVILLE, ILLINOIS 62025

Reporter: James W. May

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MONSANTO COMPANY, a
Delaware Corporation,

Defendant.

1 APPEARANCES:

2 Paul L. Pratt, Esq.

For the Plaintiffs

3 Messrs. Bowles, McDavid, Graff & Love

by Charles M. Love, III, Esq.,

4 P. Michael Pleska, Esq. and

5 Thomas E. Scarr, Esq.

For the Defendant.

6 IT IS STIPULATED AND AGREED by and between counsel
7 for the plaintiffs and counsel for the defendant that the
8 deposition of FRANK CALKINS, may be taken pursuant to Rule
9 26(a) of the Federal Rules of Civil Procedure, on behalf of
10 the plaintiffs, on June 14, 1983, at Room 215, Radisson Hotel,
11 St. Louis, Missouri, before JAMES W. MAY, a Notary Public
12 within and for the County of Madison, State of Illinois; that
13 the issuance of notice and dedimus is waived, and that this
14 deposition may be taken with the same force and effect as if
15 all Federal rules and statutory requirements had been com-
16 plied with.

17 IT IS FURTHER STIPULATED AND AGREED that any and
18 all objections to all or any part of this deposition except
19 objections as to the form of the questions asked or answers
20 given, are hereby reserved and may be raised on the trial of
21 this cause.

22 * * * * *

23 FRANK CALKINS

24 produced, sworn and examined on behalf of the plaintiffs,
25 deposes and states as follows:

DIRECT EXAMINATION

BY MR. PRATT:

Q Tell the Court and jury your name, please.

A Frank Calkins.

Q I am going to ask you some questions concerning a lawsuit we have out in Nitro, some plaintiffs, some employees. And if anything I ask you you don't understand, you let me know, okay?

A All right.

Q And again, what is your name and address?

A My name is Frank Calkins. I live at 340 Lakewood Lane, Ballwin, Missouri.

Q Where are you employed, sir?

A Monsanto Company.

Q And how old a man are you?

A Fifty-six.

Q All right. What year did you graduate from high school?

A High school? 1946.

Q What did you do following your graduation?

A Excuse me. I graduated in '45.

Q What did you do following your graduation from high school?

A I was in the Navy for a year. In 1945 until 1946.

1 Q What type of work did you do there, sir?

2 A I was a Seaman, First Class, radio technician.

3 Q When you got out of the Navy, what did you do?

4 A I worked for about six months and then started

5 college.

6 Q Where did you work?

7 A Marshall Field & Company, Chicago.

8 Q And where did you start to college?

9 A Started at MIT, Massachusetts Institute of

10 Technology in Cambridge Massachusetts.

11 Q All right. And did you graduate from that

12 institution?

13 A Yes, sir.

14 Q What year?

15 A 1950.

16 Q And what was your degree in, sir?

17 A Bachelor of Chemical Engineering. Bachelor's

18 degree in chemical engineering.

19 Q All right. And you would have graduated in

20 '50, right?

21 A Yes, sir. June of '50.

22 Q What did you do after you graduated from MIT?

23 A I went to graduate school at Northwestern

24 University, Evanston, Illinois from September of 1950 through

25 September of '51.

1 Q Did you obtain a Master's degree?

2 A No, I did not. I did not complete my thesis

3 work.

4 Q What was your line of study?

5 A Chemical engineering.

6 Q Chemical engineering. And was there a reason

7 other than to join the work force that you didn't write your

8 thesis at that time?

9 A I ran out of money basically. I thought I

10 had better get a job. My parents were pushing too.

11 Q Where did you go to work?

12 A Started work at Monsanto.

13 Q Okay.

14 A At WGK, Krummrich plant.

15 Q Did you ever get your Master's?

16 A No.

17 Q Have you ever had any further formal

18 education?

19 A Yes, sir.

20 Q And what is that, sir?

21 A I went to evening school for about four years

22 at Washington University working towards an M.B.A., which is

23 a Master's of Business Administration.

24 Q And did you attain that?

25 A I did not attain the M.B.A. I was transferred

1 to Nitro before I finished the course. Monsanto has a tui-
2 tion refund policy.. So you do push for young engineers to
3 go back to school.

4 Q Did you have any further education?

5 A No, sir. Other than continuing education
6 courses.

7 Q All right. Now when you first went to work
8 for Monsanto, I think you said you went to work at the
9 Krummrich plant?

10 A Yes, sir.

11 Q W. G. Krummrich. And what was your first job,
12 first position with them there?

13 A I hired into Krummrich. I was hired in as a
14 starting chemical engineer. And my first job was as a lab
15 analyst. This would be in November of 1951. This is basical-
16 ly part of the training program Monsanto had at this time.

17 Q In other words you were out of your field as
18 far as that is concerned?

19 A They started you in to learn about chemicals
20 was the idea.

21 Q How long were you in that?

22 A One month.

23 Q And where did you go after that?

24 A I became a shift supervisor in a manufacturing
25 unit at Krummrich plant for about two years.

1 Q That again would be outside of the chemical
2 engineering field?

3 A Well, Monsanto does use chemical engineers as
4 production supervisors. That is one line of advancement would
5 be through manufacturing. And they would use their chemical
6 engineers working up in manufacturing.

7 Q All right.

8 A This would be sort of a logical progression.

9 Q All right.

10 A In that type of career.

11 Q About what year would that bring us to?

12 A About '52, thereabouts.

13 Q What was your next position?

14 A I worked in the Technical Service Department
15 at Krummrich plant. This is a plant engineering group.

16 Q And how long were you in that job?

17 A Off and on until about 1958.

18 Q What were your responsibilities and duties
19 there?

20 A Minor engineering work for the plant. Yield
21 studies, debottlenecking efforts. Maintenance efforts.

22 Q Tell the jury what debottlenecking means.

23 A We have a unit that does not -- we want to
24 get more capacity out of it. And we look to see what the
25 bottleneck is. Quite often we may have a pump that doesn't

1 pump fast enough. Or we have a vessel that is too small.
2 And we would put in a larger pump or a larger vessel or a
3 larger heat exchanger to get more capacity out of the unit,
4 to meet our sales requirements or whatever else. This would
5 be minor. The major work at Monsanto is done by their in-
6 corporate engineering department. Minor work is done with
7 plant engineering groups like I was in at that time.

8 Q The actual work would be done normally by
9 outside contractors?

10 A Quite often this was done by the plant
11 maintenance people. And we have a, most plants have a project
12 group that handles some of this type of work.

13 Q All right.

14 A Besides regular maintenance, they do some of
15 this type of work.

16 Q In 1958, when you left that job, where did you
17 go, sir?

18 A I was transferred to Nitro, West Virginia.
19 This would be early '58, January, February, something like
20 that.

21 Q And what was your position there?

22 A Transferred into the Technical Service
23 Department at Nitro, which is a similar type of group that I
24 came out of Krummrich.

25 Q How many years were you at Nitro?

1 A About six years.

2 Q Is that your only tour of duty?

3 A At Nitro?

4 Q Yes.

5 A The only time I was there full-time at Nitro,
6 I had later on, I came back as a project manager. I had some
7 projects through our Corporate Engineering Department at Nitro.

8 Q And what were your jobs or positions from '58
9 to '64 at Nitro?

10 A I started as a technical services engineer,
11 and about two years later I was promoted to a supervising
12 engineer over Ag Engineering, Plant Engineering. I had two
13 people reporting to me at that time.

14 Q And who were they?

15 A We had a Mr. Toby White, M.T. White. And a
16 Vern Rhodes.

17 Q Who was your supervisor at that period of
18 time?

19 A Warren Henschcliff. He was a TSD superintendent,
20 Technical Service superintendent.

21 Q And that was two years?

22 A May have been two to three years. I don't
23 know exactly.

24 Q Was that over the 2,4,5 T unit?

25 A Yes, that was one of the units that was

1 involved with at that time, that's correct.

2 Q Were you involved at that time in any way,
3 shape or form with the testing of the 2,4,5 T or any of its
4 components for the presence of dioxin?

5 A No, sir.

6 Q You were in there then I guess about how long,
7 three years, you say?

8 A About three years.

9 Q Would that run you from about '60 to '63?

10 A Now I have not gone back and looked at time
11 schedules. So I am somewhat hazy. But I believe the 2,4,5 T
12 unit, the new 2,4,5 T unit started up in like '62. And I
13 left Nitro about '63 to '64. So it would be in that period,
14 yes, '60 to '63 is about right.

15 Q And would that be building 92?

16 A Yes, sir.

17 Q Did you do or your organization or your
18 department do some of the setting up of the equipment in
19 building 92?

20 A No. Basically the design of 92 was done by
21 our Ag Engineering Department in St. Louis. We, I think one
22 of our men, Mr. White, acted as the manufacturing represen-
23 tative. This is typically the way Monsanto did projects at
24 that time. And so he represented the plant on, to get the
25 plant needs into this design. But the design was done by

1 our Engineering Department at St. Louis. That was a major
2 project. We did not take part. We met and discussed it, but
3 we did not have the prime responsibility.

4 Q Did you have an outside contractor that built
5 the unit?

6 A I believe that Union Boiler put it in, but I
7 am not sure. I am not sure. This would be done through
8 Monsanto, again our Engineering Department, through a con-
9 struction engineer and again this was not in my department.

10 Q You had Union Boiler employees throughout
11 that plant though, pipefitters, did you not, on a continuous
12 basis?

13 A I am not sure of that. I do know that we used
14 Union Boiler as a contractor for some of our expansions at
15 Nitro in that period. I am not sure we used Union Boiler.
16 I am not sure of that.

17 Q Did you have outside employees during that
18 period that did pipefitting work though?

19 A I believe we did. But again this is not my
20 major area of responsibility. So I am not really sure.

21 Q Who they were you don't know?

22 A I don't know. I think we would probably go
23 outside at times.

24 Q Did you have anything to do with the health
25 or safety of any of the workers?

1 A No, sir.

2 Q On any aspect?

3 A No, sir.

4 Q Of all the chemicals you made?

5 A No, sir.

6 Q And specifically 2,4,5 T and dioxin, right?

7 You had nothing to do with that?

8 A I had nothing to do with the health and
9 safety. I mean the -- I guess repeat the question. I am
10 sorry. The hygiene I guess is what you are asking.

11 Q You had nothing to do with the health or
12 safety in your job?

13 A No, sir.

14 Q Let me finish. In the 2,4,5 T plant?

15 A No, sir.

16 Q Did you do any work along the lines of --
17 well, strike that. Let me ask you this first. Did you know
18 that some of the employees there were getting an acne called
19 chloracne?

20 A Yes, sir.

21 Q Did you do any work during that period of time
22 in your field, to ameliorate or lessen the amount of chlor-
23 acne that was being caused?

24 A That, part of our responsibility would be to
25 provide some minor plant projects to possibly lessen exposure

1 to chemicals. And that would be like putting in ventilation
2 fans, duct work hoods. I do not recall what we did speci-
3 fically but possibly we did some work in that respect. I
4 don't remember any specific project. But this would be part
5 of a plant engineering group area of responsibility.

6 Q Now for instance did you from time to time,
7 in your capacity, involve in say putting dust collectors in?

8 A We worked on a dust collector problem in the
9 start. And we did work with our Ag Engineering, recommending
10 putting in a different type of dust collector, that's right.
11 That is more for keeping the product in the plant rather than
12 putting it out in the atmosphere. It's not so much for the
13 safety of the people working at the plant, in the plant site.

14 Q What was the reason you didn't want it outside
15 of the plant?

16 A 2,4,5 T is a noted broadleaf weedkiller, and
17 it would kill all the trees in the valley if you got very
18 much of it out there. That is what its use is. It's to
19 kill broadleaf weeds and plants.

20 Q One other thing that you were involved with
21 then was the dust collection problem?

22 A We worked on that among others, yes, sir.

23 Q Were you also involved in your job in plant
24 capacity or in capacity increase of the 2,4,5 T unit?

25 A We, at Nitro we had two units. We had an old

1 unit in building 34. And ultimately they put in a unit in 92
2 to give us more capacity. Before they put the unit in at 92,
3 we were looking at ways of increasing capacity in the unit at
4 building 34, that's correct. We could sell --

5 Q More than you could make?

6 A More than we could make, that's correct.

7 Q And of course in the Viet Nam war the capacity
8 increased almost geometrically, right?

9 A Yes, sir. We were selling to the government,
10 that's correct.

11 Q And one of your jobs as a chemical engineer
12 was to help provide this capacity, right?

13 A To look at ways to maximize it, that's correct.

14 Q Do you have any figures offhand that, in the
15 -- starting when you started there in '58 and the time when
16 you left, what the capacity went to?

17 A I have no recollection of numbers, I'm sorry
18 to say. That was 20 years ago. And I have had a lot of
19 projects since then. So I don't know what we were talking
20 about.

21 Q Definitely a large increase though, right?

22 A I think the new plant was going to be quite a
23 bit larger than the 34 unit, that's correct.

24 Q Other things you worked on would have been
25 like fume control, was that a problem?

1 A We did some of that. And again I don't know
2 specifically what we did. Or I don't remember specifically.

3 Q What about filtration installation? Would that
4 be in the work that you did?

5 A Part of our -- yes. We did some work in
6 filtration. Again working with other people. But again we
7 were trying to keep the, minimize the loss of 2,4,5 T to the
8 waste streams. And we were talking about putting in a second-
9 dary filter. I believe we had a project to do that. This is
10 typical of what a project group would do at Nitro. Which
11 didn't work by the way.

12 Q Did you ever have anything to do with advising
13 the workers on what type of protective clothing if anything
14 should be worn?

15 A No, that was not our responsibility. That was
16 the manufacturing responsibility.

17 Q And you never told any of the workers there
18 that what was causing their chloracne, right?

19 A I never told them and I didn't know. This was
20 back in the sixties. I wasn't aware of what caused it either.

21 Q When did you learn that dioxin could cause
22 chloracne?

23 MR. LOVE: Objection to the form of the ques-
24 tion. You are presupposing a conclusion on the
25 part of the witness.

1 MR. PRATT: The man just said he didn't know
2 at that time.

3 MR. LOVE: Well, maybe he never knew. I think
4 that your question can be better phrased and I
5 object to its form.

6 Q Go ahead.

7 MR. LOVE: Go ahead and answer. Do you want
8 to read the question back?

9 A Yes, repeat the question now.

10 (Whereupon the last portion of the record was
11 read by the Reporter.)

12 Q Let me strike that. Did you ever learn that
13 dioxin could cause chloracne?

14 A I read articles where they suspect chloracne
15 is caused by dioxin.

16 Q All right. When did you read those articles?

17 A That was fairly recently, I think. And of
18 course Missouri, dioxin has got a lot of headlines recently.
19 I would say in the seventies.

20 Q Okay.

21 A I don't know exactly when.

22 Q Did you ever see the workers there when you
23 were there with chloracne on their face?

24 A I saw one foreman that had a very bad case of
25 chloracne. And that is the only one I can recall that really

1 had any problem.

2 Q In any event, for whatever reason you never
3 warned anybody that dioxin could cause chloracne, right?

4 A No.

5 Q Okay. Do you know of any other diseases that
6 it can cause?

7 A No, sir.

8 MR. PRATT: I told you it would be short.

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12 FRANK CALKINS
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4 STATE OF ILLINOIS)

5) SS.
6)

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8 COUNTY OF MADISON)
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10 I, JAMES W. MAY, a Notary Public, duly commissioned
11 and qualified in and for the County of Madison, State of
12 Illinois, do hereby certify that pursuant to notice came
13 before me on the 14th day of June, 1983, at Room 215,
14 Radisson Hotel, FRANK CALKINS, who was by me duly sworn to
15 testify to the truth and nothing but the truth of his know-
16 ledge touching and concerning the matters in controversy in
17 this case; that he was thereupon carefully examined upon oath,
18 and his examination reduced to writing under my supervision;
19 and that the deposition is a true record of the testimony
20 given by the witness.

21 I FURTHER CERTIFY that I am neither attorney nor
22 counsel for nor related to nor employed by any of the parties
23 to the action in which this deposition is taken; and further,
24 that I am not a relative or employee of any attorney or
25 counsel employed by the parties hereto, or financially in-
terested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my notarial seal on this _____ day of
_____, 1983.

Notary Public in and for the County
of Madison, State of Illinois.