IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CECIL SCOTT, ET AL	*	
	*	
	*	
VS.	*	CIVIL ACTION
	*	NO. B-84-1103-CA
	*	
MONSANTO COMPANY	*	

****
August 31, 1987
Volume IX
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BEFORE THE HONORABLE JOE J. FISHER
UNITED STATES DISTRICT JUDGE, AND A JURY

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ALSO PRESENT:

Mr. William Papageorge, Corporate Representative for the Monsanto Chemical Company.

AFTERNOON SESSION

(1:30 p.m., Monday, August 31, 1987)

THE COURT: Please be seated. We are ready to continue.

MR. LACEY: Yes, Your Honor. We have made some additional cuts and we will be skipping now over to Page 305, beginning at line 20, plaintiffs' offer.

(Reading from video deposition)

Q What other plants have you visited?

A I mentioned plants originally, sir. I visited one other plant. I visited a total of three plants.

(End of reading)

MR. LACEY: Go to Page 306, line 8.

(Reading from video deposition)

Q Which was the third plant?

A The third plant was a plant of Mobil Oil Company in New Jersey.

Q When did you visit that plant?
A I don't recall the date, sir.
Q Do you recall even the decade that that visit took place?
A I believe it would have been maybe mid-60's.
Q By the way, I don't think I asked you and I need to do that, what date approximately was it that you visited this capacitor plant in Wisconsin?
A I would say in the 60's sometime.
Q And what was it that this Mobil Oil Company plant in New Jersey was doing?
A The plant was making catalyst for cracking oil to produce the desired fractions and I think -- from Texas, you know what cracking is.
Q I have understanding what is involved in that.
A Probably better than mine. But anyway, the operation involved making small pellets of material. I don't recall what it was. The pellets, for want of a better description, looked like frog's eggs or tapioca.
Q Okay.
A Perhaps a little larger in size, but not bigger than a small dried pea.

The information apparently was at --

(End of reading)

MR. LACEY: I'm sorry. "The formation." You misread that.

MR. MUSSELWHITE: Okay.

(Reading from video deposition)

A The formation apparently was at elevated temperatures and to permit the catalyst to become solid and strong and -- I don't know that I saw any of the finished ones, but let me say probably as hard as a dried pea.

They were put in large tanks or vats that may have been 6 to 7 feet in diameter, and 8 to 10 feet in depth. And one of the Aroclors, I believe 1242, was used as a fluid in these open tanks to allow these particles to become firm and hard.

I was asked to look at the operation because they had had several cases, two or three cases I believe of chloracne or skin rash and I can't recall that it was necessarily chloracne. But they did have skin problems on the arms and hands and in the groin area.

This was not typical of most chloracne

cases. Most chloracne cases, I think, from other causes, from other materials, developed around the neck and face and caused blackhead type eruptions rather than other types of skin reactions.

In any case, it turned out that one of the steps in determining how the pellets were solidifying or setting up was to dip the bare hands into the Aroclor to feel them and then perhaps wipe their hands or a rag or wipe their hands on their trousers in the groin area. And the few cases, I don't -- I'm not sure. There weren't more than four or five at the most -- had developed this skin problem.

Well, it was obvious in this case, that that plant was not avoiding prolonged and repeated skin contact. And when they went to whatever changes in processing that they did, the problem ceased to exist.

(End of reading)

MR. LACEY: Go to Page 309, Line 2 continuing with the plaintiffs' offer.

(Reading from video deposition)

Q And again I take it, just like with the Wisconsin plant, it was your view that the information previously supplied by Monsanto before you arrived should have been adequate to have them avoid the type of conduct that was taking place?

A That's right.

Q But for some reason, it was not?

A For some reason, there system broke down.

Q Did it occur to you that maybe the workmen were under the understanding that simply dipping their hands in to feel the pellets and wiping it off was not prolonged contact?

A I can't express an opinion on the reaction of the individual workers.

Q Well, to you, when you used the word -- and I'm talking about Monsanto medical department, you and Dr. Kelly -- you used the word, "avoid prolonged contact," did you intend to say "don't allow any skin contact at all"?

A No, sir.

Q Well, the workmen at this Mobil plant, they simply dipped their hands in, felt the pellets briefly, pulled it back out, and wiped it off immediately on a rag, didn't they?

A I can't even guess of how complete the removal by a rag was.

Q But their process was to dip it in for a few seconds, feel the pellet, pull it back out, and then attempt to wipe it off?

A Yes, sir.

Q Was that more than -- or was that, in your definition, "prolonged skin contact"?

A I would think so if the hands were not washed afterwards.

(End of reading)

MR. LACEY: Going to line 18.

(Reading from video deposition)

Q Well, how often did an individual workman dip his hands in that vat?

A I don't recall.

Q Was the problem -- the real problem allowing them to put their hands in the vat at all, wasn't it

A That's my belief, yes.

(End of reading)

MR. LACEY: Going to Page 311, line 5.

(Reading from video deposition)

Q So, your real recommendation was, "Don't allow any skin contact, and that will solve the problem."

A That's right.

Q And your labels and your technical bulletins certainly did not say "Avoid any skin contact," did they?

A No, sir.

Q They just said avoid repeated prolonged skin contact?

A That's right.

(End of reading)

MR. LACEY: Go to line 21, with Monsanto's offer.

(Reading from video deposition)

Q I see.

A I would not hesitate today to take and wash my hands in Aroclor 1242.

Q I see.

A I wouldn't do it everyday of my working life. I would not anticipate that industry

would, other industrial hygienists and people in industry would regard the action and exposure of a motor mechanic in a garage who has repeated and prolonged skin contact, if you with, lubricating oil.

Q In case of this Mobil plant, do you think the problems that allowed this to take place was a breakdown in the Mobil organization?

A I think so, yes. And I'm not certain this wasn't a brand-new application that had just been developed by their research and engineering group.

(End of reading)

MR. LACEY: Going to Page 327 at line 1, with the plaintiffs' offer.

(Reading from video deposition)

Q When you first went to the Anniston, Alabama, plant did you attempt to determine what the work history had been?

A Yes.

Q And weren't you advised that there had been serious chloracne problems in earlier years of the plant operation there?

A There had been chloracne cases in the late '30's at that plant. I can't describe them as "serious."

Q I see. You would not use word the word "severe" attacks of chloracne?

A To my knowledge, they were not so described in any other -- I've never seen them described in that fashion, other than in that memo.

Q What about internal sickness? Were you advised of problems of internal sickness?

A I never heard of any internal sicknesses at the Anniston plant in the people exposed to or working with the PCBs.

Q I see. Are you aware of any internal sicknesses that might be caused by exposure to PCBs?

A Are you saying, sir, internal in the individual or internal in Monsanto?

Q Internal in the individual.

A I'm aware of the publications in the 30's, in the late 30's, of the work done by Dr. Drinker at Harvard, sponsored by Monsanto, Union Carbide, and one or two other people that included PCBs with chlorinated materials and chlorinated napthalenes, specifically.

Q My question is: Are you aware of any internal sickness that can be causeed by PCBs and if so, what they are?

A That can be caused?

Q Yes.

A I think, sir, we've said that the -- there is -- there is the possibility of liver injury.

(End of reading)

MR. LACEY: Going to Page 329 at line 6, the plaintiffs' offer.

(Reading from video deposition)

Q Will you agree that people who show distinct allergies should be diverted to work not involving PCBs?

A I have never heard of any indication that there were people who were allergic to PCBs.

Q What about people who were generally allergic to other matters? Would you agree that those people should be diverted to other work not involving PCBs?

A I'm sorry. Your voice dropped and --

Q I'm sorry. I will try keep my voice up. Would you agree that people who show {a

allergies, distinct allergies, other than to PCBs, should be diverted to work not involving PCBs?

A I see no reason for it.

Q Would you agree that scrupulous cleanliness of the skin -- include the face, neck, and arms -- and of the clothing -- especially undergarments -- is essential and needs strict enforcement in PCB areas?

A No, sir.

Q That is what these people recommended in this Monsanto report, is it not?

A As I read it, yes, sir.

Q And of course, you would not agree with the recommendation that barrier creams should be used on the parts of the skin which come into contact with solid or liquid PCBs?

A No, sir.

Q No, you would not agree?

A I would not agree that they should be used. I would rather --

Q Okay.

A -- see them avoid this contact.

(End of reading)

MR. LACEY: Going to Page 332, line 16.

(Reading from video deposition)

Q There are also some workers who are more sensitive than others to particular problems, aren't there?

A Yes, sir.

(End of reading)

MR. LACEY: Going to Page 336, line 22.

(Reading from video deposition)

Q Let me show you a document numbered 993. This is a report entitled "On the Toxicity of the Aroclors," by Robert M. Brown, Chief, Industrial Hygiene Section, Division of Health, Department of Public Welfare, the City of St. Louis. Do you know Dr. Brown?

A City of St. Louis? Oh, yes, I know Bob Brown.

Q This paragraph right here, would you just look over that paragraph?

A I have read it sir.

Q Dr. Brown -- is it Dr. Brown?

A No, sir. Mr. Brown.

Q Mr. Brown indicates there was need to give

warning about Aroclors, is there not? Is that what he says?

A Yes.

Q And he says, "the toxicity of these compounds." He is talking about Aroclors, isn't he?

A Yes, sir.

Q "The toxicity of these compounds has been repeatedly demonstrated, both from the standpoints of their absorption from the inspired air as well as from their effects in producing a serious and disfiguring dermatitis when allowed to remain in contact with the skin."

A Mr. Brown says that, but it's incorrect.

(End of reading)

MR. LACEY: Going to Page 340, line 1.

(Reading from video deposition)

Q You believe he just was not able to correctly interpret the reports?

A I don't know why he used the word "repeatedly." I was -- I would not have because I don't think the number of instances deserve that adjective description. They were

"repeatedly" in that one state department would take the bulletin that has been issued by the original authors and the New York bulletin and distribute it as perhaps one of their own. And these references showed up again and again and again, although the actual instances were not all that repeated, as is indicated there.

Q Well, interestingly enough, this discussion that we've just looked at by Dr. -- I'm sorry -- Mr. Brown -- is contained in a 1955 Monsanto document that talks about the hazards of PCBs, Document 990 through 997; is that correct?

A Let me, if I may, refer back to this other one first, sir. Wait a minute. What are we looking at now?

Q Well --

A We are back to the Anniston?

Q Well, Mr. Brown's comments are part of that entire document.

A Okay.

Q And I simply wanted to show you that that -- those -- that information by Mr. Brown is a part of and put into a larger Monsanto document put out in 1955. That is correct, is it not?

A I will have to read it, sir.

Q Well, you can look at the front page, I think; and you can see how it was put together. And you have still got front page --

A Oh --

Q -- under your hand.

A I'm sorry. I read something here that I thought you were referring back to the Anniston document. You showed me first just Mr. Brown's letter.

Q Yes. I showed you --

A You didn't show me the cover page.

Q That's right. And now I'm asking you to look at the entirety of the document.

A I believe my comments may have been out of -- excuse me -- out of context.

Q And I guess my question to you is this: His comments were part of this larger 1955 document talking about the hazards of Aroclors, correct?

A I don't remember ever seeing it. I can't place who -- who I presume is the author -- Mr. Mather -- except that I think I may have said earlier he was a chemist at the Anniston plant, sir.

Q My question really is: That is a 1955 document by Mr. Mather dealing with the hazards

of Aroclors, is it not?

A According to the title, yes, sir.

Q And that is clearly a Monsanto document, is it not?

A I would characterize it as a plant -- a Monsanto plant document.

Q Okay. And I guess what I'm trying to find out is why, if Mr. Brown's comments about PCBs were inaccurate, they were still part of Monsanto documents on the hazards of PCBs that were being put out by the plant in 1955. That's several years after you and Dr. Kelly are responsible for telling the plants what the hazards of PCBs are, is it not?

A I think we discussed yesterday, sir, that the interpretation of toxicity data varied, particularly among people who were not familiar with the field of toxicity. And I can't comment on Mr. Mather's statement here. I recognize some of his references.

(End of reading)

MR. LACEY: Going to Page 356, line 15.

(Reading from video deposition)

Q Monsanto used Industrial Biotest to study chronic exposure effects from PCBs; is that right?

A Yes, sir.

(End of reading)

MR. LACEY: Continuing with Monsanto's offer.

(Reading from video deposition)

Q And previous to that, Monsanto had not done any chronic exposure tests at all, correct?

A That's not correct.

Q What chronic exposure tests had Monsanto done on PCBs prior to using Industrial Biotest?

A The inhalation studies with the University of Cincinnati by Dr. Treon, which were published and which led to the government-accepted threshold limit values for an eight-hour day exposure, 40 hours a week.

Q Which government group accepted those?

A The American Conference of Governmental Hygienists.

Q That's not a government agency though?

A It's made up of government agency

representatives.

(End of reading)

MR. LACEY: Going to Page 359, line 25.

(Reading from video deposition)

Q Now, the work that was done by IBT on chronic exposure to PCBs and the hazards of it was submitted to various government agencies, was it not?

A Yes, sir.

(End of reading)

MR. LACEY: Going to Page 361, line 8, continue with Monsanto's offer.

(Reading from video deposition)

Q I'm asking about whether the results of those studies which came in were then submitted to governmental agencies in support of Monsanto's position that there should not be a total ban on PCBs.

A I think you used the word, quote, "complete," end quote, and you said, quote, "total," end quote. There was submitted to the

government agencies to indicate that there were data that which would permit them to evaluate the potential of the PCBs getting in the food chain. Now, in connection with the complete ban, they were used to indicate that, as I said earlier today, the complete ban of PCB use would have caused a terrible economic turmoil. And a subsequent government task force -- and I don't know what -- who the representatives were on that task force -- agreed that the dielectric, transformer, and capacitor uses should continue until there were suitable substitutes available.

Now, to that extent I would say the IBT studies may well have been used by the appropriate government agencies to indicate that this was not a crisis situation, but what the -- uses in the dielectric area could continue.

(End of reading)

MR. LACEY: Continuing with the plaintiffs' offer, line 6.

(Reading from video deposition)

Q Simply, though, if I understand your answer, the short answer is that the studies were

submitted by Monsanto to various government agencies in connection with their position on what ought to be done with PCBs, correct?

A Yes, sir.

Q It's important that a reputable testing laboratory be selected, is it not, for independent testing?

A Oh, yes, sir.

Q And it's important that the tests that are conducted be very thorough and very accurate, is it not?

A Yes, sir.

Q And it's important, in fact, to be very careful in deciding how to conduct the tests and what products to test and for what duration?

A Yes, sir.

Q It's important that each particular test be properly managed throughout the course of the test?

A Yes, sir.

Q It's important that the results be reported accurately and precisely?

A Yes, sir.

Q In the case of IBT, were efforts made to monitor their work?

A The progress of the work was monitored, yes.
Q Were you personally involved in that progress monitoring?
A On occasion I either visited their labs or their people came to St. Louis to update us on the status of the reports. As you recall, some were 90-day studies, some were three months, et cetera.
(End of reading)

MR. LACEY: Going to line 19.

(Reading from video deposition)
Q When you went to IBT to monitor the progress of the studies, did you go and physically view the research animals?
A Not in all cases. I did in some cases.
Q I see. Did you attempt to determine if they were being properly fed, properly cared for, and so forth?
A It occurred to me they were.
(End of reading)

MR. LACEY: Continue with Monsanto's offer on 364.

(Reading from video deposition)
Q And when you say "it occurred to you," did you go to look for that?
A I shouldn't have worded the -- my observation would indicate that they were.
Q Okay.
A I'm sorry. I said, quote, "occurred," end quote. I don't know what word I meant.
(End of reading)

MR. LACEY: Line 8, continue with the plaintiffs' offer.

(Reading from video deposition)
Q Well, you did go and look then?
A Yes, sir.
(End of reading)

MR. LACEY: Going to Page 371 -- that has been deleted. Going to Page 375, line 12, with the plaintiffs' offer.

(Reading from video deposition)
Q Was it ever a matter of importance to

Monsanto to provide customers with information on impurities, if any, in PCBs?

A I would think it was Monsanto's responsibility to provide materials that fit definite specifications. And if there were impurities, then that would not be within the specifications.

(End of reading)

MR. LACEY: Going to Page 376, line 3.

(Reading from video deposition)

Q Let me show you a letter marked 23565 from you to Otis Fancher dated May 25th, 1970. And I want to direct your attention to the second paragraph.

A Yes, sir.

Q There is a reference in that document to providing a sample of Aroclor that has been, quote, "cleaned up," close quote. What does that mean?

A I don't have any knowledge, sir, at this point.

Q You wrote the letter, but you don't remember what it means?

A No, because I don't remember the letter.

(End of reading)

MR. LACEY: Going to Page 383, line 4, continuing with the plaintiffs' offer.

(Reading from video deposition)

Q Well, isn't it a fact that you had to schedule tests, in part, based on whether you could get budget money for the testing?

A Not in connection with the PCBs, no, sir.

Q In connection with other products but not PCBs? That's the way it worked?

A We may have had to apply a little more persuasion on some other materials than we did with the PCBs.

Q Well, why did PCBs get such special treatment?

A Well, because we had recognized, as did management, that this was a series of compounds that deserved expenditures of money to get the appropriate answers.

(End of reading)

MR. LACEY: Going to Page 384, line 2,

continuing with plaintiffs' offer.

(Reading from video deposition)

Q The rat study work done by IBT for Monsanto showed liver problems, did it not?

A At some levels of feedings, yes, sir.

Q In fact, Monsanto was both surprised at the apparent toxicity of -- or it was surprised at the apparent toxicity of PCBs in rats, dogs, and chickens, was it not? And I direct your attention to a letter of March 4th, 1970, from yourself to Dr. Calandra, Document 23534-35 -- in particular to Paragraph No. 2 that talks about tha topic.

A I have read the paragraph, sir.

Q And you and Monsanto were surprised at the toxicity that showed up for your Aroclor products in all of the animals being studied, were you not?

A I don't think that's quite correct. I think we were surprised to find effects at some of the lower levels that we had not -- that we would not have anticipated from any earlier work done on PCBs.

Q And what that indicated was that PCBs were

more toxic than you had previously thought, wasn't it?

A This data?

Q Yes.

A These data? It indicated that by the ingestion route in animals that these materials were more toxic than we would have expected.

Q Of course, this is information that's first coming to light in March of 1970, correct?

A Yes, sir.

Q And the reason that information is not coming to light before March of 1970 is that Monsanto had not commissioned any chronic toxicity studies for PCBs of the type it was doing here earlier?

A We had not conducted ingestion studies earlier. That's correct.

Q Had you done that, you would have had this information about the higher than anticipated toxicity earlier, would you not?

A From the standpoint of possible ingestion, yes, sir.

Q And you could have then taken that information into account in providing information on the safe handling and toxicity, correct?

A I'm not sure that's the case.
Q Don't you think you would want to have taken that information into account?
A We would have evaluated it. And I think we would have had to decide whether -- there were data available that we needed to obtain to show whether the metabolic was the same regardless of whether the entry to the body inhalation, skin absorption, or ingestion.
Q Well, workmen in the workplace can ingest PCBs, can they not?
A I beg your pardon?
Q I said workmen in the workplace can ingest PCBs, can they not?
A Workmen, I guess, in any environment can ingest what they are working with, if they are so inclined.
Q Well, I don't mean to intentionally. One can get it on their hands, and in smoking a cigarette, have it come in through that route, get it in the mouth. One can, through the hands, in handling food and in other ways, put the hands to the face and mouth, ingest PCBs, can they not?
A Very limited quantities, yes, sir.
Q And what these tests were showing is that

PCBs were having toxic effects by the ingestion route at lower levels than Monsanto had anticipated, isn't that's correct?

A Yes, sir.

(End of reading)

MR. LACEY: Going to Page 396, at line 23.

(Reading from video deposition)

Q There wasn't any substantive difference between Aroclor 1242 produced in England and Aroclor 1242 produced in Illinois and Aroclor 1242 produced in Anniston, Alabama, was there?

A Not to my knowledge sir,

Q The proper information for the toxicology and safe handling of Monsanto Aroclors would be the same wherever the products were being produced and wherever they were being sold, wouldn't they?

A Yes, sir.

Q The standards don't vary from country to country or business to business, do they?

A No, sir.

(End of reading)