

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

FRANCES E. KEMNER, et. al.)
)
Plaintiffs,)
)
VS.) NO: 80-L-970
)
MONSANTO COMPANY,)
)
Defendant.)

REPORT OF PROCEEDINGS

Before the HON. RICHARD P. GOLDENHERSH

EXCERPT OF TESTIMONY OF PHOCION PARK

April 11, 1985

APPEARANCES:

Mr. Rex Carr
Mr. Jerome Seigfreid
On Behalf of the Plaintiffs;

Mr. John Musgrave
Mr. Joseph Massif
On Behalf of the Defendant.

Debra M. Musielak, CSR, CM
Official Court Reporter

1 (The following is a portion of the testimony of Phocion Park)

2
3 Q. (by Mr. Carr) Now, Mr. Park, I think you mentioned
4 the other two or three elements that you would need to
5 consider before you notify OSHA would be the toxicity of the
6 product, the type of exposure, and the anticipated exposure,
7 correct, sir?

8 A. Yes, I don't know that I intended those would be,
9 they would be exclusive, could well be other factors.

10 Q. I want to know those other factors, sir, that
11 causes this committee --

12 A. Mr. Carr, I don't know if I could tell you all the
13 factors we consider, the Statute, as you know, is extremely
14 brief..

15 Q. What I want to know is the factors that you, as
16 part of this committee considers before you determine whether
17 or not you are going to notify the EPA that you have a
18 product that has a substantial risk or hazard associated with
19 it as far as the public is concerned?

20 A. The Statute, I believe, is just one sentence, at
21 most two, it's very brief, and we would consider everything
22 that might have any relevance whatsoever to a determination
23 of substantial risk of injury.

24 Q. Tell me what those things are, sir?

1 A. Might have with a given situation?

2 Q. Well, the situation we are discussing right now is
3 this 2,4-dichlorophenol that Monsanto is manufacturing and
4 that you've discussed at those meetings in May and your memos
5 in June?

6 A. All right, we are no longer discussing
7 hypotheticals then?

8 Q. No, we are discussing right now, we have taken care
9 of one of your four requirements, and you now, since the
10 recess there may be other requirements, other things, that
11 you will consider. I want to know what they are.

12 A. Mr. Carr, again, this was five years ago, I deal
13 with a great many matters, I'm looking at those two
14 memoranda, I cannot pull back into my mind every bit of the
15 discussion that went on at those two meetings.

16 Q. Mr. Park, I didn't ask you that.

17 A. No, what you are asking me --

18 Q. I asked you for -- now, I don't want to jump ahead
19 in this examination that I have, but you are presently doing
20 the same thing that you did in 1979, you are still part of
21 that committee that has the obligation to decide whether you
22 will or will not notify the EPA that there are substantial
23 hazards associated with your product, isn't that correct,
24 sir?

1 A. Whether there would be --

2 Q. You are still on that committee, aren't you?

3 A. Whether --

4 A. You are still on that committee, aren't you, sir?

5 A. That's correct.

6 Q. And you have exercised your function, you
7 participated as late as January of this year, according to
8 documents that were delivered to me at 1:30 today, isn't that
9 correct, sir?

10 A. That's correct.

11 Q. And you are considering today the law hasn't
12 changed in the meantime, has it, sir?

13 A. No.

14 Q. The law is the same as it was when it was enacted
15 by Congress and signed by the President. I don't know who
16 was President then, '77, somebody was President, but in any
17 event, that is the same law that you are operating under
18 today, hasn't changed, has it, sir?

19 A. That's correct.

20 Q. And the considerations haven't changed, the
21 elements that you must consider haven't changed, isn't that
22 correct, sir?

23 A. I might point out --

24 Q. Could you answer that question, please, sir, I'm

1 not really interested in you pointing out, I'm interested in
2 you answering that question.

3 A. The law has not been judicially interpreted, it is
4 still one sentence.

5 Q. Did I ask you that, Mr. Park, I asked you is the
6 law the same today as it was in 1977, '78, and '79, sir?

7 A. That's correct.

8 Q. And you are -- you are considering the same things
9 today in making your judgment as to whether or not you notify
10 the EPA as you are considering in 1979, isn't that correct,
11 sir?

12 A. It might vary with the situation.

13 Q. The only variance would be if there are different
14 health effects from a particular chemical, isn't that
15 correct, sir, everything else is the same, it's the health
16 effect that we are talking about, that's what the whole law
17 is about, is it not, sir?

18 MR. HUSGRAVE: Which question, Mr. Carr? Object to
19 the multiplicity.

20 THE COURT: Overruled.

21 Q. (by Mr. Carr) Isn't that the only thing that the
22 law is about is the health effect on human beings, at least
23 that section of the law that I'm asking you about now, not
24 the environment and not, although that is a part of it, but

1 what I am concerned with and what this case is concerned
2 about are human beings, now, that is what that law is about,
3 isn't it, sir?

4 A. Well, the law specifically reads health and the
5 environment.

6 Q. Yes, and I'm now talking about health, health of
7 human beings, isn't it, sir?

8 A. Yes.

9 Q. And was health in '77, '78, '79 and today, isn't
10 it, sir?

11 A. That's correct.

12 Q. So the only thing that might vary is whether or not
13 the chemical you are producing today might have different
14 health effects. Now, if you learn today that a chemical that
15 you had thought was harmless in '77, if you learned today for
16 the first time that a chemical thought to be harmless in '77
17 because you studied it and you've investigated and put it in
18 the laboratory, if you found today that what had been
19 considered a harmless chemical was no longer harmless, that
20 is your duty, your obligated to notify the EPA, isn't that
21 correct, sir?

22 A. If we determine there is a substantial risk of
23 injury to health or the environment, we will do so.

24 Q. Is the answer to my question yes?

1 A. No.

2 Q. Are you saying, Mr. Park, that if you discovered
3 today for the first time that there were new health effects
4 in what had been theretofore thought to be a harmless
5 chemical, that you are not obligated to notify the EPA? I
6 thought I spent a half an hour on that point with you?

7 A. Mr. Carr, you probably know the Statute as well as
8 I do, you know.

9 Q. Mr. Park, could you please answer that question?

10 MR. MUSGRAVE: He's trying to, Mr. Carr.

11 A. I did.

12 Q. And if you discovered that one of your chemicals
13 that everybody had thought was harmless before your
14 laboratories, you had bioassays and you had toxicological
15 studies conducted and you found that that chemical thought to
16 be harmless in fact is not harmless, that it is harmful to
17 human beings, are you saying that you are not obligated to
18 report that discovery to the EPA?

19 A. I'm saying that a group --

20 Q. Could you answer that question, please, sir?

21 MR. MUSGRAVE: Object, it's vague.

22 THE COURT: Overruled?

23 A. We may not be, depending upon it's use, anticipated
24 exposure, whatever, other factors.

1 Q. You are bringing the other factors into play again
2 then, anticipated exposure and use, I'm talking about --
3 those are other points that we will get to. I'm talking
4 about the health effect, Doctor, Mr. Park?

5 A. Yes.

6 Q. Other things being equal, if you find new health
7 effects, harmful health effects from your chemicals, you are
8 obligated to report that, aren't you, sir?

9 A. That alone might not be sufficient to require a
10 notification.

11 Q. Mr. Park, I'm asking you to assume the other things
12 are there, only that you've got the other elements that
13 you've required, but you have now discovered that this
14 heretofore thought to be harmless chemical is now harmful,
15 hypothetically speaking, and assume all the other elements
16 are that that is in your mind necessary, the law obliges you
17 to report it to the EPA, doesn't it, Mr. Park?

18 A. The law obligates us to report whenever there is a
19 substantial risk of injury or of health or environment and
20 that we do.

21 MR. CARR: Would you instruct the witness to
22 answer?

23 THE COURT: Please assume them and answer the
24 question as posed?

1 A. If I must answer, as I understood the question I'd
2 have to answer no.

3 Q. And --

4 Q. I feel it's an improper hypothetical.

5 Q. And have you been -- Mr. Park, you understand that
6 you are not the judge of that, the Court is the judge whether
7 or not it's proper, you cannot take the law into your hands
8 in this courtroom, Mr. Park, you understand that, don't you,
9 sir? You are a lawyer, you understand that, don't you, sir?

10 A. Certainly.

11 Q. And if the Court tells you to assume certain facts
12 and by ruling on the question whether he's right or wrong, it
13 isn't for you to decide, he has told you that you must assume
14 those facts and now you are saying that it is an improper
15 hypothetical, you have taken unto yourself the obligation and
16 function of the Court, Mr. Park, and I please ask you to obey
17 the Court. Will you assume that it is a proper hypothetical
18 question and answer, sir?

19 A. All right, I think I did so, Mr. Carr.

20 Q. And your answer is still no, even assuming the
21 hypothetical is proper?

22 A. Yes.

23 Q. Now, are you giving -- when you sit on this
24 committee, Mr. Park, are you advising the other members of

1 this committee of your view of what you at Monsanto are
2 obligated to do, are you doing that job?

3 A. I'm trying to interpret the law to this committee.

4 Q. And you have been advising Monsanto in the same
5 framework as you have been discussing it with us today?

6 A. No, we don't deal with hypotheticals, Mr. Carr.

7 Q. Is that correct?

8 A. No, we deal with actual situations that arise.

9 Q. And did you understand that my hypothetical wasn't
10 telling you to assume that it's a real life situation, did
11 you misunderstand the question, Mr. Park?

12 A. I understood you to describe to me a hypothetical
13 situation that I was required to answer.

14 Q. Mr. Park, you understand that when we in the law
15 use the word hypothetical, that you must assume that it is a
16 true life situation, you understand that, Mr. Park?

17 A. Well, Mr. Carr, but your description was
18 incomplete.

19 Q. You understand that Mr. Park or not?

20 A. It --

21 Q. Because I don't wish to continue this unless you do
22 understand those basic rules, if I think a word means
23 something and you think it means something else, we can't
24 communicate. Now do you understand that you must assume this

1 is a real life situation that I'm giving you, that it really
2 occurred, that you really discovered that one of your
3 products that you thought to be harmless has now, you've
4 discovered it's, harmful that it hurts people, it kills
5 people, it paralyzes people, does all kind of horrible things
6 to people, do you persist in your judgment, sir, that you are
7 not obligated to tell the EPA that this harmless chemical is
8 not harmless?

9 A. Now, are you referring to an obligation under
10 Section 3E?

11 MR. CARR: Your Honor, would you direct the witness
12 to answer that question?

13 THE COURT: Mr. Park, you have to answer the
14 question as posed. It's a proper question.

15 A. Under the circumstances described, Section 3E would
16 not require a notification of the EPA, and in the absence of
17 other considerations --

18 Q. And, that is the way you've been administering the
19 requirements, the way you at Monsanto have been interpreting
20 and administering the requirements since it's enactment, is
21 that correct, Mr. Park?

22 A. We consider all factors --

23 Q. Excuse me, that's the way you've been interpreting
24 and administering the Statute since it's enactment in 1977?

1 A. We consider all factors.

2 MR. CARR: Your Honor, would you direct the witness
3 to answer?

4 THE COURT: Mr. Park, again, and you are licensed
5 in Missouri, I really don't have to tell you this again.
6 Answer the question as posed, Mr. Park.

7 A. Yes.

8 Q. And, is that true of all the products that come to
9 your attention, not just the chlorinated phenols, but the
10 wide range of products that Monsanto makes?

11 A. Yes, we comply fully with the laws requirements.

12 Q. Mr. Park, I didn't ask you that, I asked you
13 whether or not you use the same judgment and interpretation
14 with all the products as you have described to us today in
15 answer to my questions, or is that correct, sir, you do use
16 that same judgment with all Monsanto products?

17 A. We comply fully with all requirements.

18 MR. CARR: Your Honor, would you direct --

19 A. Yes.

20 MR. CARR: -- the witness to answer that question?

21 THE COURT: Mr. Park, just answer the question.
22 It's perfectly clear. What is your answer, Mr. Park?

23 A. Your Honor, I feel that Mr. Carr is trying to
24 develop an appearance that we don't consider all factors.

1 THE COURT: Mr. Park, I don't care what your
2 feeling are about whatever Mr. Carr is trying to do with his
3 questioning. You have an obligation as a sworn witness to
4 answer the question as posed, and you are licensed in a
5 couple states, you know that. I'm licensed in Missouri, too,
6 I know the rules are not different over there. Now, please
7 answer the question as posed.

8 A. I would answer it, Your Honor, but he's posed a
9 question requiring a yes or no that --

10 THE COURT: I believe that it can be answered by a
11 yes or no, I'm directing you to answer.

12 MR. MUSGRAVE: May my objection be noted requiring
13 the witness to answer yes or no when he wants to give an
14 explanation?

15 THE COURT: Your objection is noted, objection is
16 overruled. Mr. Park, please answer the question.

17 A. Then I would respond yes.

18 THE COURT: Thank you.

19 Q. (by Mr. Carr) Now, Mr. Park, another element that
20 you mentioned and is -- dealing with the toxicity of the
21 product now, assume at what level of contamination of your
22 products with 2,3,7,8-TCDD or some, or the dioxins in
23 general, at what level do you believe is required before you
24 think Monsanto should notify the EPA under TSCA, assuming

1 other things being equal.

2 MR. MUSGRAVE: I object to the question as calling
3 for the witness to state conclusions that are medical or
4 toxicological in nature, and I don't believe he's been
5 qualified as an expert in that catagory.

6 THE COURT: Overruled. I don't think they do call
7 for that.

8 A. I don't really know what to say, Mr. Carr, I am not
9 a toxicologist. I rely on our experts in our Medical
10 Department.

11 Q. I understand that, but you've been relying on those
12 experts for a number of years, they have given you your
13 advice, you sit as a committee, you participate in those, you
14 make those decisions based upon what you know about
15 toxicology, don't you, sir?

16 A. Not on the basis of what I know, I think it would
17 presumptuous of me --

18 MR. MUSGRAVE: Just a moment.

19 Q. From what you've been told --

20 MR. MUSGRAVE: Just a moment, Mr. Carr, may he
21 finish his answer, Mr. Carr?

22 THE COURT: You may finish your answer.

23 MR. MUSGRAVE: Go ahead.

24 A. I think it would be presumptuous of me to express

1 views on toxicology when it is not my field when we have
2 available to us at those meetings, where we consider how to
3 respond to this reporting requirement, qualified experts in
4 our Medical Department.

5 Q. Mr. Park, the memos that you have in front of you
6 that you prepared, that you wrote, that bear your signature,
7 you consider, do you not, the toxicity of the product, don't
8 you discuss it in those memos, the toxicity of the product?

9 A. I certainly do, please understand that those --

10 Q. Mr. Park, I understand that you are not a
11 toxicologist, that you act upon information given to you by
12 those that you consider to be certain at that meeting, now,
13 bearing that in mind, Mr. Park, at what level for
14 2,4-dichlorophenol, at what level do you consider it requires
15 notification to the EPA that dioxin is there?

16 MR. MUSGRAVE: Same objection.

17 THE COURT: Same ruling.

18 Q. If there is any level, there may not be any level.

19 A. I really have no idea, Mr. Carr.

20 Q. Have you not been advised, at least meetings as to
21 the levels of dioxin content of the product?

22 A. I would certainly have been made aware of all
23 information that was presented at the meetings.

24 Q. My question is, sir, have you not been advised at

1 those meetings of the level of dioxin content? Now,
2 directing your attention specifically to this meeting, the
3 meetings in May and June dealing with the 2,4-dichlorophenol?

4 A. I would certainly be aware of the information
5 that's expressed in those memoranda.

6 Q. Mr. Park, at those meetings, did the toxicologist
7 present tell you the levels at which the 2,3,7,8-TCDD is
8 toxic? We have the information here that one part per
9 billion in TCDD in 2,4,6-trichlorophenol would cause cancer
10 in those animals that were tested.

11 MR. MUSGRAVE: Object to that, that's counsels
12 interpretation. The document speaks for itself. I continue
13 my objection.

14 THE COURT: Overruled. It is a continuing
15 objection, and it has been so noted.

16 Q. (by Mr. Carr) Now, were you given information as
17 to other levels of dioxin contaminant other than the one part
18 per billion that you know of?

19 A. I don't even know of that, Mr. Carr, beyond just
20 this reference in this one memo with --

21 Q. Well, is there any other information that you have
22 available to you other than those memos and those notes as to
23 what level of contamination was discussed with reference to
24 dioxins?

1 A. At those two meetings?

2 Q. Yes.

3 A. I note here down in the beginning of the bottom
4 paragraph on the first page, of the May 14, 1979 memorandum,
5 that is Exhibit 1238, says, "It was mentioned that the
6 product (93% 2,4-Dichlorophenol) may contain mono-, di-,
7 tri-, and tetrachlorodibenzo-dioxins in trace amounts. After
8 a process change the product contain no detectable dioxin (at
9 the detection level of 10-20 parts per billion).

10 Q. And did you accept that as fact at that time that,
11 after the process changed there was no detectable dioxin at
12 this level of 10 to 20 parts per billion?

13 A. Yes.

14 Q. And, you got that information, I take it, from the
15 chemists involved, the analytic chemists, perhaps Mr. Wilson,
16 Dr. Wilson?

17 A. Certainly from someone at the meeting.

18 Q. And, they -- he told you that it was present in
19 trace amounts prior to the process change?

20 A. Yes.

21 Q. And what did you consider, what do you consider to
22 be trace amounts?

23 A. Those are amounts that are quite low.

24 Q. I know that, but at what level, what you consider

1 trace amounts?

2 A. Okay, I would consider trace amounts, you know,
3 that's something I guess that may have with time, five years
4 ago I have no idea really what it would mean.

5 Q. Well, what do you consider it means today then?

6 A. I have no idea. I would guess it would mean --

7 MR. MUSGRAVE: I object to the witness guessing, I
8 object to what the witness may today think trace amounts mean
9 when we are talking about a document and what a document
10 meant back in May of 1979.

11 THE COURT: Overruled.

12 A. Five years or so trace amounts could be anything
13 from probably parts per billion to parts per million
14 depending upon the analytical capabilities.

15 Q. And what is your idea of trace amounts today?

16 A. I think it would depend upon the same thing in the
17 products.

18 Q. Well, the 2,4-dichlorophenol, Santophen,
19 orthochlorophenol?

20 A. I think the term trace amounts is used when it's
21 felt that the amounts are so small as to not be significant.

22 Q. My question is, Mr. Park, what are -- and you still
23 are meeting on those committees and you discussed it just as
24 late as January the 25th, because the memo was delivered to

1 me two hours ago that you had such a meeting in which you
2 discussed the levels of dioxin. Please don't fence with me,
3 Mr. Park, the meeting was just a couple of months ago. What
4 do you consider trace amounts?

5 MR. MUSGRAVE: I object Your Honor, he's asked him
6 and he's answered the question.

7 THE COURT: Overruled.

8 Q. The level?

9 A. I'm not a toxicologist, Mr. Carr, I would -- if a
10 toxicologist tells me trace amounts are present, I guess I
11 don't feel I need to go further, there would be something
12 insignificant.

13 Q. You are saying at those meetings you do not cover,
14 you do not discuss the level of contamination?

15 A. It would if it was significant.

16 Q. Well, what are the levels that you consider
17 significant then, put it -- that would be non-trace, I take
18 it?

19 A. (pause) You are asking me levels of what would I
20 consider significant, because I guess it would vary, I really
21 am reluctant.

22 Q. 2,4-dichlorophenol, orthochlorophenol-crude,
23 parachlorophenol, Santophen, what levels do you consider to
24 be significant, sir, that, is by your definition they would

1 not be trace?

2 A. Mr. Carr, don't we have toxicologists that have or
3 will testify here that can give you a much more qualified
4 response?

5 Q. Mr. Park, they have been and will be examined
6 insofar as their knowledge is concerned. You are being
7 examined at this time with all due respect, Mr. Park, about
8 your knowledge of the matter, because you all jointly go
9 together and you make up Monsanto -- you make the decisions
10 for Monsanto as to whether or not you notify EPA, whether or
11 not you notify the people at Sturgeon, whether or not you
12 notify the workers in the plant. You are Monsanto, you are
13 part of it, I'm asking you now about your knowledge, what do
14 you consider significant amounts based upon your experience
15 in this department? For twenty years or longer you've been
16 doing the work and having conference after conference with
17 medical doctors, conference after conference on health
18 effects, conference after conference with chemists on levels
19 and amounts, conference after conference with toxicologists
20 I'm. Asking you, Mr. Park, what you've learned in that
21 period of time and what you consider to be significant
22 amounts of dioxin in the chemicals produced by Monsanto.

23 MR. MUSGRAVE: Object to counsel's speech, request
24 it be stricken, assuming facts that are not in evidence, have

1 never been proven.

2 THE COURT: Overruled. Proper question.

3 A. I guess I would consider trace amounts to be parts
4 per billion up into parts per million.

5 Q. At what level?

6 MR. MUSGRAVE: Object to witness' guess, Your
7 Honor, request it be stricken. We are not here to have
8 witnesses guess.

9 THE COURT: Overruled.

10 Q. At what level of parts per billion, Mr. -- did it
11 start at one, at two?

12 A. I simply cannot go any further, I'm not a
13 toxicologist, I'm not a chemist.

14 Q. Mr. Park, we have gone through this a number of
15 times, do you not consider that level when you have those
16 meetings?

17 MR. MUSGRAVE: You mean Mr. Park or others?

18 Q. Do you not, Mr. Park, do you not as the member of
19 the committee that considers whether or not the EPA should be
20 notified, do you not consider the level of contamination?

21 A. If the meeting concerns something of that sort,
22 then --

23 Q. That's what we are talking about, Mr. Park.

24 MR. MUSGRAVE: Well, you didn't tell him that, Mr.

1 Carr, you just said do you not consider, did
2 particular facts.

3 THE COURT: Go ahead, Mr. Carr.

4 Q. Would you answer the question, please?

5 A. The trace amounts would be again from I guess
6 detectable amounts up to so many parts per million, something
7 less perhaps than one percent.

8 Q. Detectable amounts, you have the capacity to detect
9 it then it is not a trace chemical, is that correct?

10 A. No. No. No. You have to detect it before it can
11 become a trace.

12 Q. Well, what is it, at what level?

13 A. Anything let's say up to one percent.

14 Q. Anything that you can detect up to one percent is
15 considered a significant amount?

16 A. See, your question was what would I consider trace.

17 Q. Or is it anything from detectable levels up to one
18 percent is considered trace, which do you mean, Mr. Park?

19 A. Do I understand your question, Mr. Carr, that you
20 are asking me to describe what I would consider trace
21 amount?

22 Q. You gave to me that you would consider trace
23 amounts to be something other than significant, so either way
24 you want to look at it, what do you consider trace amounts,

1 or to put it another way, what could you consider to be of
2 significance for dioxin in your chlorinated phenols?

3 A. As a lawyer responding to a chemist's question, I
4 would say I would guess that, depending upon the substance, a
5 trace amount could be anything, any concentration perhaps up
6 to 1 percent.

7 Q. I'm sorry, your voice dropped and I could not hear
8 your answer. Would you repeat it please, sir, what do you
9 consider trace amounts in chlorinated phenols for dioxin?

10 THE COURT: I had trouble hearing the last part,
11 too, if you would repeat it, Mr. Park?

12 A. Okay.

13 THE COURT: Your voice dropped right toward the
14 end.

15 A. When pressed I would guess that in my view, a trace
16 amount depending upon the chemicals involved --

17 Q. Mr. Park, I gave you the chemicals. Mr. Park,
18 don't fence on that, chemicals are chlorinated phenols, tell
19 me what you consider as a member of this committee to be
20 trace amounts of dioxins in chlorinated phenols.

21 MR. MUSGRAVE: I object to his prior question will
22 be noted, Your Honor?

23 THE COURT: It's noted.

24 A. (pause) If your question is directed toward those

1 memoranda, it may be able to be determined what the trace
2 amount referred to specifically right here.

3 MR. CARR: Your Honor, would you direct the witness
4 to answer?

5 THE COURT: Mr. Park, that wasn't the question,
6 please answer the question as posed.

7 A. Well, if I'm required to answer.

8 THE COURT: Yes, you are, Mr. Park.

9 A. I would guess that a trace amount in general means
10 something up to several parts per million.

11 Q. I'm sorry?

12 A. Up to several parts per million.

13 THE COURT: Thank you.

14 Q. And --

15 MR. MUSGRAVE: Again for the record, I object to
16 the witness guessing.

17 THE COURT: So noted.

18 Q. And what is your view of several?

19 MR. MUSGRAVE: View of several?

20 Q. What do you mean when you say several?

21 A. I really don't know, Mr. Carr, I do not know.

22 Q. You know what you mean, Mr. Park. I'm asking you
23 what is your definition of the word "several"?

24 A. I've done my best to explain that I do not know not

1 being a chemist, not being schooled.

2 Q. Mr. Park, you are misunderstanding my question, I
3 simply want you to define a word that you use every day.
4 When you use the word several, what do you mean?

5 A. I do not know what I mean in terms of trace
6 amounts, Mr. Carr.

7 Q. I'm not even asking you in terms of trace amounts,
8 you said several parts per million, I'm simply trying to find
9 out is one several?

10 A. I don't know, Mr. Carr.

11 Q. You don't know whether or not one is several, Mr.
12 Park. Well, perhaps is two several?

13 A. I don't know.

14 Q. Is three several?

15 A. I don't know.

16 Q. Sir?

17 A. I don't know.

18 Q. Is four several?

19 A. I don't know.

20 Q. Is five several?

21 A. I don't know.

22 Q. Is six several?

23 A. I don't know.

24 Q. Is a thousand several?

1 A. A thousand may be a little more than several.

2 Q. Well, then is 900 several?

3 A. I don't know.

4 Q. Is eight several?

5 A. I don't know.

6 Q. Is twenty several?

7 A. I don't know.

8 Q. Is thirty several?

9 A. Could be.

10 Q. Could be?

11 A. Yes.

12 Q. Mr. Park, when you took the bar exam, I'm sure some
13 of those questions included the word several, didn't it,
14 sir?

15 MR. MUSGRAVE: Object, that has nothing to do in
16 the context of a question asked of this witness with regard
17 to a field he has no expertise in as to what might constitute
18 several parts per million as being trace. Object as improper
19 question.

20 THE COURT: Overruled, does not deal with that at
21 all.

22 A. I don't recall, Mr. Carr.

23 Q. When you see -- when you come home and you tell
24 your son or your daughter, I saw several children on the

1 street today, what is the limits, the lower limit that you
2 would define or use the word several with, the very lowest
3 limit that you would use the word several in connection with?

4 A. I don't know, Mr. Carr.

5 MR. CARR: Your Honor, would you direct the witness
6 to answer that question?

7 MR. MUSGRAVE: He has answered the question, he
8 doesn't know. There is nothing in the law that says a
9 witness cannot say he doesn't know.

10 Q. Okay, I'll accept that for the moment.

11 THE COURT: Okay.

12 Q. If you don't know then one could be several,
13 couldn't it, sir?

14 A. Possibly.

15 THE COURT: Mr. Carr --

16 Q. We have got it defined that several can be between
17 one and thirty, don't we, sir?

18 A. Yes, at that point -- I didn't intend to so limit
19 it.

20 THE COURT: We will take about a five minute break
21 and we will resume testimony. The admonishments I gave you
22 earlier will apply during this break also. Court is in a
23 very short recess.

24 (Following a recess, these proceedings were had in open

1 court.)

2 Q. (by Mr. Carr) Now, Mr. Park, if I understand you
3 correctly, products that contain what you believe to be trace
4 amounts of the contaminant such as dioxins, need not be
5 reported under the TSCA Section 8E, is that correct, sir?

6 A. I wouldn't want to make that general a statement,
7 Mr. Carr, there might be other factors that could require.

8 Q. The factors we are talking about is dioxin content
9 of the chlorinated phenols, that's the factors that we are
10 talking about, Mr. Park. Have I correctly quoted you? Do I
11 understand you to say that chlorinated phenols that contain
12 what you define as trace amounts of dioxin need not be
13 reported to the EPA under Section 8E of the toxic control,
14 Toxic Substances Control Act, is that correct, sir?

15 A. I wouldn't make that broad a statement, it
16 obviously was a consideration at the meeting to consider the
17 8E obligation on May, May 11.

18 Q. Mr. Park, do you understand my question?

19 A. Yes, I think I did.

20 Q. Then, is there -- are there levels lower than trace
21 amounts at which you consider in those chlorinated phenols
22 one or all that need to be reported to the EPA under TSCA?

23 A. Not because of their dioxin content.

24 Q. Then I am correct in saying that other things being

1 equal in your chlorinated phenols, if they contain dioxin
2 levels, trace amount levels, as you have stated here, that
3 need not be reported to the EPA, is that correct, sir?

4 MR. MUSGRAVE: I object to counsel's
5 characterization of the witness' testimony as to what he has
6 stated with regard to trace amounts. He has never testified,
7 never been asked whether trace amounts need be or need not be
8 reported. He's never testified to that.

9 THE COURT: Objection is overruled, it's a proper
10 question?

11 A. I note the comment on the memorandum that in --

12 MR. CARR: Your Honor, would you direct the witness
13 to answer that question, please?

14 THE COURT: Mr. Park, please answer the question as
15 posed?

16 A. Could I have the question read again?

17 THE COURT: Read it one time.

18 COURT REPORTER: "Then I am correct in saying that
19 other things being equal in your chlorinated phenols, if they
20 contain dioxin levels, trace amount levels, as you have
21 stated here, that need not be reported to the EPA, is that
22 correct, sir?"

23 MR. MUSGRAVE: Also object to the vagueness of
24 being equal.

1 THE COURT: Overruled.

2 A. Your Honor, may I ask you a question?

3 THE COURT: No, sir, just answer the question.

4 A. It would depend upon I think some other factors
5 such as --

6 Q. I already gave you, Mr. Park, the -- Sir, I gave
7 you already other things being equal, I said assume anything
8 else that you want to assume with regard to the consideration
9 that you want to consider, is it your view that chlorinated
10 phenols that contain trace amounts as you have defined trace
11 amounts or less than those amounts need not be reported to
12 the EPA under the mandatory provisions of the Toxic
13 Substances Control Act Section 8E?

14 A. Yes, my answer to that question would be that it
15 need not be reported.

16 Q. And, has that been your view since the first
17 obligation that you had connected with the committees that
18 considered those things for Monsanto?

19 A. Taking your words as I understood them, Mr. Carr,
20 considering all other factors with this, that this would not
21 of itself require reporting, yes.

22 Q. And to be fair with you, you have considered that
23 there will be exposure, you have considered the knowledge
24 that you have that you've been told by toxicologist as to the

1 toxicity of various levels of dioxin including what you've
2 defined as trace amounts, you've considered all those things
3 in giving this answer, have you not, Mr. Park?

4 A. Mr. Carr, I've considered such things as the fact
5 --

6 Q. Excuse me, could you answer that question, please,
7 Mr. Park?

8 A. Mr. Carr, that question raises a question in my
9 mind as to whether I understood you earlier when I was
10 responding to an earlier question. If a product has been in
11 use for many many years and there are no known health effects
12 as a result of that use, and then it is found that it
13 contains a trace amount of dioxin or anything else, the mere
14 fact that a trace amount of contaminant is found is not of
15 itself a reason for submitting an SE report to the EPA.

16 Q. And that is your understanding of the law?

17 A. That's correct.

18 Q. That if you have a trace amount, as you defined it,
19 that it need not be reported.

20 MR. MUSGRAVE: I object to counsel paraphrasing
21 what this witness defined.

22 Q. I have every right to paraphrase and I intend to do
23 so.

24 MR. MUSGRAVE: You do not, because the testimony

1 was a guess and the witness so stated it.

2 THE COURT: I ruled on that point. Objection is
3 overruled. His paraphrasing was proper, Mr. Carr, you may
4 proceed.

5 Q. Would you read the question to him, please.

6 COURT REPORTER: "That if you have a trace amount,
7 as you defined it, that it need not be reported."

8 A. Didn't I answer that?

9 COURT REPORTER: There was an objection.

10 Q. Answer that question, please.

11 A. In the absence of a substantial risk of injury of
12 health or environment there would be no reporting required.

13 MR. CARR: Your Honor, would you direct the witness
14 to answer the question as I posed it to him?

15 THE COURT: Mr. Park, it's been asked of you once,
16 it's been read back to you once. Answer the question as
17 posed.

18 MR. HUSGRAVE: I object. He answered, let it be
19 noted, he has not.

20 A. Would you again ask the question?

21 Q. Would you read the question to him again.

22 THE COURT: No, my Court Reporters are not
23 dictating machines. It's been read to you once, asked of you
24 once, answer the question as posed, Mr. Park.

1 A. I don't remember what the question was, Your Honor,
2 I'm sorry.

3 THE COURT: Mr. Carr, would you ask it again,
4 please?

5 Q. Is it your view of the law that if the chemical
6 contains trace amounts as you have defined it, that you need
7 not report the presence of those trace amounts as you have
8 defined it in the chlorinated phenols to the EPA under the
9 Toxic Substances Control Act Section 8E?

10 A. That's correct, that is my view.

11 Q. And, is that your belief, sir, based upon the fact
12 or what you believe to be the fact that the substance, the
13 chemical in question has been used for years?

14 A. I'm sorry, Mr. Carr, I'm not sure, you say is it my
15 understanding the chemical has been used for years.

16 Q. Yes, you gave that as a factor that you took into
17 play when you answered the question?

18 A. Yes, it is my understanding that that's the case.

19 Q. And, does that presuppose that you know that all
20 the chemicals that have been manufactured before contained
21 those levels of dioxin that is from 1 part per million to 30
22 parts per million?

23 A. It merely supposes that there are no known adverse
24 health effects from use of the chemical over many years.

1 Q. Does that not include, Mr. Park, that you didn't,
2 that you don't know whether or not that chemical did or did
3 not contain the contaminant, the dioxins?

4 A. I guess it would contain an assumption that the
5 composition over the years --

6 Q. Remained the same, doesn't it, Mr. Park? --

7 A. Remained the same.

8 Q. But now, if you learned that your products vary,
9 that perhaps 90 percent of your products, perhaps 99 percent
10 of your chlorinated phenols contained very ultra ultra, not
11 your definition of trace, but ultra ultra trace levels of
12 dioxin but that every now and then you find a batch that
13 contains higher levels of dioxin, would not that change your
14 assumption, Mr. Park?

15 A. Here I would rely on our toxicologists as to the
16 extent of whether to which a variation might have any impact.

17 Q. And you would then rely on your toxicologist for
18 dioxin content then even though your product had theretofore
19 been used in your belief without harmful effect, wouldn't
20 you, sir?

21 A. I would rely on our toxicologist.

22 Q. You would do that because you do know that 2,3,7,8
23 and other dioxins nearly as toxic as 2,3,7,8, you do know
24 that that does have injurious health effects on people, you

1 do know that, don't you, sir?

2 A. I believe on the basis of --

3 Q. You've been told that, haven't you, Mr. Park, by
4 the toxicologist?

5 MR. MUSGRAVE: He asked him what he knew.

6 MR. CARR: I think if he knows he can say he knows,
7 he can say he doesn't know.

8 MR. MUSGRAVE: You asked him, you said you do know,
9 you challenged him to answer, I would request he be permitted
10 to answer the question as posed.

11 A. I think there are some questions as to the
12 injurious effect of dioxin.

13 Q. And you've had those questions in mind when you've
14 made your decisions, haven't you, sir?

15 A. Yes.

16 Q. And have you --

17 THE COURT: I'm sorry, I didn't hear your answer,
18 did you say yes?

19 A. Yes.

20 THE COURT: Thank you.

21 Q. And you decided, did you, sir, that there were no
22 injurious health effects from exposure to any level of
23 dioxin?

24 A. Now again, I don't participate as a member of this

1 group as a toxicologist or a chemist. I participate to try
2 to interpret the law for them and merely to take down the
3 minutes.

4 Q. Mr. Park, you know when you have to interpret the
5 law you've got to know whether or not the substance is toxic,
6 that's part of the law interpretation?

7 A. And here I have to rely on other experts.

8 Q. And have the experts told you -- what have they
9 told you as far as health effects, that there are none other
10 than Chloracne, is that what you've been told, Mr. Park?

11 A. I believe I've been told that there is no known
12 death resulting from dioxin exposure.

13 THE COURT: Mr. Park, I missed the whole last part
14 of what you said. Could you please keep your voice up?

15 A. I'm sorry. I believe I can recall having been told
16 that there is no known death as a result of dioxin exposure.

17 THE COURT: Thank you.

18 A. I have been told that it is highly toxic to certain
19 species of animals, apparently considerably less toxic to
20 other species and to humans.

21 Q. And what do you believe that the injurious health
22 effects that dioxin exposure is to human beings, what have
23 you been told that?

24 MR. MUSGRAVE: Asked him what he believes or what

1 he's been told, there are two different questions there, Mr.
2 Carr.

3 Q. All right, first of all what you believe.

4 MR. MUSGRAVE: You want him to testify as an
5 expert? I don't believe he's been qualified as an expert to
6 testify.

7 THE COURT: Objection is overruled. Go ahead.

8 Q. Then what you've been told, I don't care, give me
9 either one that you want to give as your counsel might want
10 you to do?

11 A. I'm trying to recall what I have been told, what I
12 have heard about dioxin toxicity, because it is not my
13 field. I believe I am aware that the first sign of an
14 adverse effect is Chloracne.

15 Q. You've been told there are any other bad results
16 from dioxin exposure?

17 A. Here it is my understanding there is some question
18 as to what --

19 Q. My question, have you been told there are any other
20 bad effects in dioxin?

21 A. I have --

22 Q. Other than acne?

23 A. I have been told there is some question as to other
24 effects and frankly I cannot remember what they are.

1 Q. So the only one you can remember that you've been
2 told is acne?

3 A. Chloracne, yes.

4 Q. Yes. And, have you been exercising your judgment,
5 have you been using your roll based upon that that you can
6 remember is the bad result from dioxin that is Chloracne?

7 A. My roll is really not to speak to toxicity, it's to
8 try to see that the group properly complies with the law.

9 Q. Now, Mr. Park, I again insist that your memo that
10 you've given us indeed deals with toxicity, you talk about
11 carcinogenic effects, you talk about toxic effects, you are
12 dealing with it, and you may not again say it today, the memo
13 you have in front of you, you discuss it, don't you, sir?

14 A. Mr. Carr, I'm writing down what toxicologists tell
15 me, you see.

16 Q. And you are using that knowledge, aren't you, sir?

17 A. No.

18 Q. You are not using it when you prepare those memos,
19 you are not using it, aren't you speaking as a part of this
20 committee, and aren't you speaking for the committee when you
21 make those reports?

22 A. Those reports contain information provided to me by
23 the toxicologist, they participate in writing.

24 Q. I'm certainly aware of that, Mr. Park, are you not

1 participating, are you not speaking for the committee when
2 you write those reports?

3 A. I am speaking for the committee.

4 Q. And you discuss the toxicity, do you not, sir?

5 A. The toxicity information from the toxicologists is
6 placed into those reports.

7 Q. And the only thing that your committee so far as
8 you can remember the ill health effects of dioxin is
9 Chloracne?

10 A. I do remember that the Chloracne is apparently the
11 first sign of an adverse effect.

12 Q. And you can remember no other adverse effects from
13 dioxin exposure other than the Chloracne, is that what you
14 are telling us, sir?

15 A. Not specifically. I can recall that there are some
16 others, but I believe there is some question as to other
17 effects.

18 Q. Have you ever seen the 1267 A, or the page from
19 which it comes?

20 A. I frankly don't recall.

21 Q. Have you ever been told that those as shown in
22 Plaintiff's Exhibit 1267 are the toxic effects of
23 2,3,7,8-TCDD dioxin in man, have you ever been told that,
24 sir?

1 A. I'm sorry, that those are the effects?

2 Q. Have you ever been told that?

3 A. I could well have been.

4 Q. But you don't remember anything except the first
5 one Chloracne, is that right, sir?

6 A. I remember that one specifically. Can you tell me
7 what this is?

8 Q. Mr. Park, it's not important that you know what it
9 is because I don't want to influence your judgment. You may
10 decide well so and so said it, I'll accept it, if somebody
11 else said it, I don't want to accept it. I'm asking you,
12 have you been told when you sit on that committee, when you
13 make a decision as to whether or not to notify the EPA about
14 substantial health risks, have you ever been told that
15 porphyria is a health risk that's associated with dioxin
16 exposure?

17 A. I frankly cannot remember hardly any details about
18 those meetings.

19 Q. You had one just --

20 A. That took place years ago.

21 Q. You had one just in January, I have the memo here,
22 just January the 25th you had a meeting and what you
23 discussed toxic effects and whether or not you should report
24 to the Government, just in January, you had to have discussed

1 those things?

2 A. Which substance was that, Mr. Carr, the January --
3 you refer to that a couple of times, I'd like to bring that
4 back into my mind.

5 Q. It deals with dioxin content of a substance.

6 A. Which substance.

7 Q. Makes no difference which substance, what it is,
8 dioxin content, we are talking about the toxicity of the
9 dioxin, we are not talking about a particular product. Do
10 you believe that we are really talking about
11 2,4-dichlorophenol or really talking about orthochlorophenol
12 or really talking about Santophen? We are talking about
13 dioxin?

14 A. Mr. Carr, I believe I can remember the January
15 one. As I recall --

16 Q. I'm not asking you about that.

17 A. There was no tetra in the product, so there was no
18 need to get into any of those things that you have on your
19 board.

20 Q. Mr. Park, we will get to that in a few moments, we
21 are talking about dioxins in your products, get to the tetra,
22 to that particular exhibit in a moment, but I'm asking you,
23 have you been told, sir, that dioxin causes porphyria,
24 2,3,7,8-TCDD causes porphyria?

1 A. I cannot recall.

2 Q. Have you been told that it causes liver damage?

3 A. I cannot recall.

4 Q. Have you been told that it causes elevated serum
5 hepatic enzyme levels?

6 A. Is this --

7 Q. Mr. Park, would you answer that question, please,
8 sir?

9 A. Mr. Carr, you are not being quite fair with me, I
10 can see now barely, my eyes are not like they used to be.
11 Thank you. Across the top it says toxic effects of
12 2,3,7,8-tetrachlorodibenzo-para-dioxin. Now, I am just a
13 lawyer, but I do know enough to know that that is said to be
14 the most toxic of the dioxin isomers, yet in your discussions
15 out here with me, you just used the word dioxin, which is
16 much broader.

17 Q. That's true, no question about that, Mr. Park, you
18 are a hundred percent right. You are absolutely correct.

19 A. The 'tetra, as I believe, was not a part of the
20 consideration at this SE meeting in January.

21 Q. And I'm not asking about the January meeting other
22 than to remind you that you have discussed dioxins, and tetra
23 was discussed at that meeting, wasn't it, sir?

24 A. To the extent saying, okay, it was not found in the

1 product.

2 Q. Oh, no, what you did at that meeting, if I remind
3 you, you compared the toxicity of the dioxins that were
4 present with the toxicity of 2,3,7,8-TCDD, that's exactly
5 what you did, Mr. Park, and I do not want to digress from
6 that to argue with that, because I'm asking you now this
7 question, have you been told that 2,3,7,8-TCDD will cause a
8 toxic effect in man, elevated serum hepatic enzyme levels,
9 have you been told that in the past, sir?

10 A. Can you tell me --

11 MR. CARR: Would you direct the witness to answer
12 the question?

13 THE COURT: Mr. Park, answer the question.

14 A. I cannot recall.

15 THE COURT: Okay.

16 Q. Have you been told that exposure to 2,3,7,8-TCDD
17 can cause disorders of fat metabolism in man?

18 A. I'm sorry, I just can't recall.

19 Q. Have you been told that exposure to TCDD causes
20 cardio-vascular disorders, heart trouble?

21 A. I'm sorry, I do not recall.

22 Q. Have you been told that it can cause disorders of
23 carbohydrate metabolism?

24 A. I don't recall.

1 Q. Have you been told that it causes urinary tract
2 disorders in man?

3 A. I don't recall.

4 Q. How about respiratory disorders, have you been told
5 about that?

6 A. I don't recall.

7 Q. Have you been told whether or not it causes
8 pancreatic disorders?

9 A. I don't recall.

10 Q. Have you been told whether or not it causes per--
11 polyperipheral neuropathy, that's pain in the nerves?

12 A. I don't recall.

13 Q. Have you been told that it causes lower extremity
14 weakness?

15 A. I'm sorry, I don't recall.

16 Q. Have you been told that it causes sensory
17 impairment, sight, hearing, smell, taste, photophobia?

18 A. I can't recall.

19 Q. Have you been told that it causes psychiatric
20 disorders, makes people depressed, neurasthenic syndromes,
21 have you been told that, sir?

22 A. I believe I can recall some vague discussion of
23 that, but I can't recall anything.

24 Q. Now --

1 A. Specific.

2 Q. Now --

3 THE COURT: Could you keep your voice up again, Mr.
4 Park?

5 A. Yeah.

6 THE COURT: Thank you.

7 Q. Mr. Park, when you have those meetings, and you
8 discuss whether or not exposure to those chlorinated phenols
9 that contain dioxin, you must of necessity, in order to
10 exercise an intelligent decision, you must of necessity be
11 told what the possible health effects can be, isn't that
12 correct, sir?

13 A. It would depend upon whether there was a
14 sufficiently high concentration of dioxin present to bring on
15 a health effect.

16 Q. All I've asked you about that concentration, and
17 you've told me that anything from 1 to 30 parts per million
18 is what you consider something above trace?

19 A. Only when you pressed me and required my answer.

20 Q. Certainly I pressed you.

21 A. Those are questions that I rely on a toxicologist
22 to answer.

23 Q. I understand that. What if a toxicologist told you
24 that 250 parts per billion of total dioxins can have a

1 harmful effect upon human beings, what if a toxicologist told
2 you that?

3 A. If a toxicologist tells us that a given exposure is
4 likely to result from the use of a product, and that that
5 exposure would present a substantial risk of health or to
6 environment --

7 Q. You are talking about exposure again, I want to
8 leave that out of it.

9 THE COURT: Gentlemen, could I see you at the bench
10 for just a moment, please?

11 MR. CARR: Could I finish this?

12 THE COURT: You can finish this one question.

13 Q. I want to get this point established. If a
14 toxicologist told you that 250 parts per billion was
15 injurious to man, would you accept that, sir?

16 A. If one of our toxicologists --

17 Q. Yes, one of your toxicologists told you that?

18 A. Yes, I would accept what he said.

19 THE COURT: Okay. Fine. We will break at this
20 point. Ladies and gentlemen, we will resume tomorrow at
21 9:30. I would remind you as I do on any overnight break that
22 you are not to read, listen to, or watch anything about this
23 case in particular, or subject matter in general in any of
24 the press or electronic media. Court is adjourned.

1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT) SS
3 COUNTY OF ST. CLAIR)
4

5 I, DEBRA M. MUSIELAK, certify the foregoing to be a
6 true and accurate transcript of the testimony and proceedings
7 in the above-entitled cause.

8 Dated this 11th day of April, 1985.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Debra M. Musielak

1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT) SS
3 COUNTY OF ST. CLAIR)
4

5 I, RICHARD P. GOLDENHERSH, one of the Judges in and
6 for the Twentieth Judicial Circuit, do hereby certify that I
7 have examined the aforesaid transcript of proceedings, and
8 certify the foregoing to be a true and accurate transcript of
9 the testimony and proceedings in the above-styled cause.

10 Dated this _____ day of April, 1985.
11
12
13
14
15

16 _____
HON. RICHARD P. GOLDENHERSH
17
18
19
20
21
22
23
24