IN THE MATTER OF:

Aluminum Company of America, et al.
vs.
Accidental & Casualty Ins. Co., et al.

Cause No. M3223

Deposition of Thomas M. Bistline
February 23, 1995

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IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ALUMINUM COMPANY OF
AMERICA, et al.,

Plaintiffs,

vs. No. M3223

ACCIDENT & CASUALTY
INSURANCE CO., et al.,

Defendants.

Deposition of THOMAS M. BISTLINE, taken on behalf of the DEFENDANTS, at the offices of Thompson & Mitchell, One Mercantile Center, in the City of St. Louis, State of Missouri, on the 23rd day of February, 1995 before Rebecca Bruner, Registered Professional Reporter and Notary Public.

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APPEARANCES OF COUNSEL:

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THOMAS M. BISTLINE

of lawful age, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, deposes and says in reply to oral interrogatories propounded as follows, to-wit:

EXAMINATION

QUESTIONS BY MR. SEIFE:

Q: Good morning.

A: Good morning.

Q: Would you be kind enough to state your full name, spelling your last for the record?

A: Thomas Bistline, B -- as in baker -- i-s-t-l-i-n-e.

Q: Mr. Bistline, what is your current business address?

A: 800 North Lindbergh Boulevard in St. Louis. Zip Code is 63167.

Q: Your current employer?

A: Monsanto Company.

Q: Your current title, sir?

A: Assistant general counsel, litigation.

Q: Have you ever been deposed before, sir?

A: Yes.

Q: Have you ever been presented as a witness

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on behalf of Monsanto as custodian of records before?

A: Yes.

Q: On how many occasions?

A: Perhaps 12 to 15 times.

Q: What was the last occasion, sir?

A: Within the last month.

Q: What was the name, caption of the matter?

A: Caption of that case was United States versus Montrose, M-o-n-t-r-o-s-e, Chemicals, et al.

Q: Any of these actions whereby Monsanto was a named party of the 12 to 15 that you've been made available as custodian of records?

A: Yes.

Q: Do you recall the names of any such actions?

A: Offhand the only one I can think of, Mr. Seife, is In Re Paloi Railroad PCB litigation. That's pending back in the Philadelphia area, Pennsylvania.

MR. CARNEY: Just for clarity, I think that's the eastern district of Pennsylvania.

A: Well, there's some cases in state court as well, so I just say Philadelphia area and it covers a multitude of sins.

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Q: (By Mr. Seife) You're being made available on Monsanto's behalf pursuant to a subpoena served upon Monsanto in an action pending in the State of Washington, an action brought by the Aluminum Company of America, Alcoa, and other related entities against many insurance companies including my clients. It's an environmental litigation coverage matter.

A: Just as a point of clarification, my understanding is I'm here pursuant to an agreement between a lawyer at your firm and Charles Merrill of the Hush & Eppenberger firm. As far as the subpoena, both sides have reserved their respected positions what is and is not required by the subpoena and that's still subject to some negotiations.

Q: We will -- counsel for both parties will proceed in the matter as agreed upon between counsel. For purposes here today, you are to testify to the best of your knowledge regarding the areas of inquiry that have been -- and I will identify those for you. If your counsel believes that some of the areas are inappropriate I'm sure he will protect your interests as well as of Monsanto.

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Okay. Back to this little background I was giving you about the case. In this case pending in the State of Washington the court has provided a deposition protocol and we are required as counsel, the examining attorney, in every deposition taken in this case to go over a couple of items which I'll be doing so here and we are required to do so at the beginning of each deposition.

There are three paragraphs. The first being that any objections during the course of the deposition are mainly for purposes of later court hearings, that unless the witness is told directly not to answer -- in this case it would be by your counsel -- the question or unless the question is withdrawn and rephrased, the question is to be answered, and that the witness is not to be influenced in his answer by the objections. Do you understand that?

A: Yes, I understand that.

Q: The second is that the witness should answer questions to the best of his ability but without guessing, speculating, or venturing opinions for which the witness does not have a basis; that the witness should state if he does not understand the question, cannot answer it as

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phrased, or is not certain what information is being sought; that the witness is not to guess at what the question means. Do you understand that instruction?

A: Yes, I do.

Q: If those circumstances arise, feel free to have the court reporter read the question back, ask me to repeat the question, ask me to rephrase the question, or if there's any aspect of the question you don't understand, please point it out and I will attempt to clarify it.

A: I certainly will.

Q: The last guidance provided by the court in the deposing matter is to define for the witness key terms that are likely to come up in the course of the deposition, such as pollution, toxic waste, waste disposal, et cetera, but before your deposition protocol, you can feel free to read what I've read to you or you can keep it in front of you as guidance as we proceed through the deposition. Any questions?

A: No, not at this point, no.

Q: Being an attorney and having been deposed so many times I'll move on and I assume you know the protocol and how we're going to proceed. You

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testified you've been deposed for other purposes other than custodian of records purposes, is that correct?

A: I have been deposed for purposes other than custodian of records.

Q: On how many prior occasions?

A: Probably only once or twice. Once that I can recall. There may have been one other time.

Q: On the prior occasions as custodian of records and for the subsequent depositions that you've testified, have any of these matters that you've provided testimony been related to insurance coverage litigation?

A: Oh, yes.

Q: And do you recall those actions?

A: Yes, I do.

Q: Would you state the identification by some familiar name or caption of the actions?

A: The caption of the case, I believe, is Monsanto Company versus Aetna Casualty Insurance Company, et al.

Q: Is that actually pending in the State of Delaware?

A: It is.

Q: Did you provide substantive testimony to

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that action?

A: Yes, I did.

Q: As well as custodian of records testimony?

A: I did not, no, I was not deposed as custodian of records in that case.

Q: Do you recall any other matters other than Monsanto versus Aetna?

A: In which my deposition was taken on substancy matter, no.

Q: Any custodian of records depositions taken on insurance coverage litigation as such as this action you're providing your testimony on?

A: Today?

Q: Correct.

A: Mr. Seife, I'm sure there have been several cases involving insurance coverage matters in which I testified for Monsanto as the custodian of records. I can't recall the captions of any as I sit here.

Q: How long have you been assistant general counsel of Monsanto?

A: Approximately four and a half years.

Q: How long have you been at Monsanto?

A: I've been at Monsanto since 19 -- February of 1982, so that would be just over 13 years.

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Q: Have you practiced as an attorney for Monsanto during that entire time?

A: Yes.

Q: Were you a practicing attorney before 1982?

A: Yes, I was.

Q: When were you practicing?

A: In New York.

Q: With what firm or entity?

A: With Simpson, Thacher, and Bartlett in New York City.

Q: Have you had any subsequent discussions regarding your deposition testimony here today?

A: Other than counsel, no.

Q: And which counsel have you had such discussions?

A: Mr. Carney, Mr. Merrill.

Q: Anyone else?

A: Lawyer named Michael Kelly.

Q: Mr. Kelly's a lawyer for whom?

A: He's outside counsel to Monsanto Company.

Q: Anyone else?

A: No.

Q: Did you have any conversations with anyone from Alcoa, any counsel from Alcoa?

A: I have not, no.

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Q: Were you shown any documents during any of these discussions regarding your deposition?

A: During the discussions, the only -- yes, I did see some documents during those discussions.

Q: What documents were shown to you?

A: Well, I looked at all of the documents at some point or another during the discussions, all of the documents that had been produced, and I reviewed, again, the documents that we withheld on the grounds of attorney-client -- or attorney work product, I'm sorry.

(Defendant's Deposition Exhibit A marked for identification.)

Q: Court reporter has marked Exhibit A to your deposition the following document. Have you ever seen this document before today?

A: This looks like the subpoena and associated papers that were served on Monsanto in January of this year.

Q: Have you ever seen this document before today?

A: Yes.

Q: Do you know why you were selected to testify on behalf of Monsanto pursuant to the deposition subpoena served upon it in this action?

A: Yes, I do.

Q: Why were you identified or selected to testify?

A: Because I am the individual at Monsanto who acts as the custodian of Monsanto's business records relating to our manufacture and sale of polychlorinated biphenyl, PCB's.

Q: Is there anyone else at Monsanto today or other than yourself that performs similar functions?

A: Unfortunately, no.

Q: I direct your attention to Tab A of Exhibit A.

A: I have it.

Q: Page two, second paragraph, Caption H.

A: Caption H.

Q: Specifically the definition of Monsanto.

A: Yes, I see it.

Q: You use the term Monsanto. Monsanto's defined here to include, among other entities, Leonard Construction and Monsanto Enviro-Chem Systems Inc.

A: I see that, yes.

Q: Does Leonard Construction have any affiliation with Monsanto, a business relationship,

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or is any part of Leonard Construction owned by Monsanto?

A: My understanding is that Leonard Construction Company is a wholly owned subsidiary of Monsanto.

Q: Where is Leonard Construction Company based? Where is their corporate office?

A: I don't know. I don't recall.

Q: You testified that -- I thought you were the custodian of business records of certain materials within Monsanto's possession, especially with respect to Leonard Construction, are you custodian of records of any of Leonard Construction's records?

A: For the purpose of this deposition I'm acting as custodian of any records in the possession of Leonard that were located that we reproduced pursuant to the agreement of counsel.

Q: Are there any other entities similar to Leonard Construction and Monsanto that you've been designated custodian of records for purposes of responding to the subpoena that is before you marked for your deposition Exhibit A?

A: I believe Leonard and Monsanto were the only two entities that we found records responsive

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to the agreement that your office reached with Mr. Merrill.

Q: You used the term "we," would you direct that -- identify that as user?

A: When I say we, we located -- I'm thinking of members of my staff at Monsanto who actually conducted the search of records to identify documents that were produced pursuant to the agreement.

Q: Thank you for the clarification. There's another entity listed in that Subparagraph H; Monsanto Enviro-Chem System Inc.

A: I see that, yes.

Q: Are you familiar with that entity?

A: Yes, I know who Monsanto Enviro-Chem is.

Q: What is Monsanto Enviro-Chem?

A: It is another wholly owned subsidiary of Monsanto Company.

Q: You testified as to your function as custodian of records for this deposition regarding Leonard Construction. Do you have any similar such designation with Monsanto Enviro-Chem Systems?

A: I would if we had found documents in Enviro-Chem files responsive to what we agreed to produce. My understanding is that we did not

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locate any records for Monsanto Enviro-Chem.

Q: Research was made for responsive materials from Monsanto Enviro-Chem System files?

A: Yes.

Q: Are these files separate and apart from the Monsanto files?

A: In part.

Q: Were there any other entities, files searched other than Leonard, Monsanto, and Monsanto Enviro-Chem?

A: I don't believe so.

Q: Can you define the terms we, as members of the staff of Monsanto, have assisted in search for materials?

A: That's correct.

Q: Would you identify each member of the staff by name that participated in the project?

A: Yes, Michael Newport, he was another lawyer at Monsanto. Jack Farroll, F-a-r-r-o-l-l, who is a litigation case administrator.

Q: Is that similar to a paralegal?

A: Yes, similar to a paralegal. Ms. Connie Wooten, W-o-o-t-e-n, she is a legal assistant.

Q: At Monsanto?

A: At Monsanto. Josephine Niblock,

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N-i-b-l-o-c-k, another legal assistant at Monsanto, and Ms. Candy Derback, D-e-r-b-a-c-k, she is also a legal assistant at Monsanto.

Q: Anyone else, sir?

A: To my knowledge, no.

Q: Did you include yourself within this group that you participated in the project for searching materials?

A: I did not actually search for materials myself. I reviewed documents that were located by others but I didn't go out and review all files myself.

Q: Were there any individuals outside the employment of Monsanto that participated in this project such as your counsel?

A: Counsel participated in the review of documents.

Q: To make this examination as sufficient as possible, would it be productive to segregate my inquiry for Monsanto, Leonard Construction, and Monsanto Enviro-Chem?

A: Actually it probably would not.

Q: Okay. Let's proceed then jointly to the section and if you need to clarify or differentiate between the three, if I can impose upon you to

please do so.

A: I will.

Q: If I use the term Monsanto as that term is defined to include Monsanto Company and the two other entities, do you feel comfortable proceeding in that fashion?

A: Yes, I do.

Q: Where were the Monsanto documents maintained that searches were performed for purposes of responding to this subpoena?

A: At our corporate headquarters at 800 North Lindbergh Boulevard in St. Louis County, and at the document storage facility that Monsanto maintains near the Westport Plaza also in St. Louis County.

Q: Is that a facility owned and operated by Monsanto?

A: I don't believe we own the facility and it's operated by a third party contractor for us.

Q: Are there any documents in that facility that -- are there any other documents in that facility that belong to any other entity other than Monsanto?

A: Monsanto as we've described it here in this deposition, the answer is no.

Q: Is there any index to those files?

A: Not a document by document index, no.

Q: Subject matter by file or box index?

A: Broadly by box, sometimes within the box by files within the box.

Q: Is it a computerized index?

A: No.

Q: Any other storage facilities other than the corporate headquarters or the document storage facility in St. Louis County?

A: To my knowledge, no.

Q: And is the basis of the knowledge of the information provided by this staff of Monsanto that performed this search project?

A: That's correct.

Q: Were any out-of-state facilities searched, any facilities in Texas?

A: I don't believe so, no.

Q: You testified that -- you testified in the Monsanto versus Aetna action in the State of Delaware and that action is currently pending, is that correct, sir?

A: That's correct.

Q: Were any of the -- and Monsanto has produced documents in that lawsuit, correct?

A: Oh, yes.

Q: And were any of the materials produced by Monsanto in that lawsuit searched to see if there were any responsive materials within that collection of materials responsive to the items set forth in the subpoena, Exhibit A, that you have before you?

A: Yes.

Q: Where were those materials searched?

A: Where were they searched?

Q: Correct.

A: At Monsanto's corporate headquarters.

Q: You testified that you gave your deposition on behalf of Monsanto as custodian of records approximately 12 to 15 times?

A: That's my best recollection, yes.

Q: Is it a safe assumption each of those occasions there were documents produced by Monsanto?

A: Yes.

Q: And were some of those occasions Monsanto was a third party and not actually a direct party to that litigation that you were providing your testimony on?

A: That's correct.

Q: Were any of the document productions in

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those matters searched to determine whether there were any responsive materials -- materials responsive to the Exhibit A to the subpoena that you have before you?

A: Not specifically, no.

Q: You say not specifically, would you elaborate what you mean by not specifically? Were just the general -- well, withdraw that question. You testified not specifically, what do you mean by that, sir?

A: By that I mean that the individual document productions that you referred to in those cases in which I appeared and testified as a custodian of records for Monsanto, the documents produced in those matters typically came from the same source; that would be the archive of records relating to PCB's that we maintain at Monsanto's corporate headquarters, so the documents that were produced in those other matters were subsets of the archive that I've referred to.

Q: We'll pursue that a little bit later on. Does Monsanto maintain any other document storage facilities other than that in St. Louis County?

A: Individual Monsanto locations. For example, a Monsanto manufacturing facility in

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another state may well have at its location documents that it stores relating to matters that occurred at that facility as well as perhaps an off-site location for documents that are no longer needed to be stored on-site for the conduct of business.

Q: Does Leonard Construction maintain such facility, off-site facility?

A: I don't know specifically.

Q: Do you know if such an inquiry was made in response to this subpoena you have before you?

A: I don't have that detail. I assume that all appropriate locations for locating documents that we agreed to produce was searched.

Q: What's the basis of your assumption?

A: My long experience with the people that I work with in responding to subpoenas of this nature.

Q: Do you know if any Leonard Construction active files or files maintained at a place of business were searched?

A: Again, I don't know specifically which sources of documents for Leonard were searched. I know that there were places where Leonard Construction Company keeps documents that were

searched because many of the documents that we've produced here came from Leonard.

Q: Are you aware of any sources of Leonard documents that were not searched?

A: No.

(Discussion off the record.)

Q: What areas of corporate headquarters were searched?

A: The archive of PCB documents, obviously, the files of the environmental group I mentioned, also the archive of documents that we maintain relating to the insurance litigation. I can't recite to you from memory all of the places that were searched. I have a recollection that certain environmental operations files were looked at and files maintained in our corporate headquarters in St. Louis that relate to operations of the plants in Texas.

Q: What Texas plants?

A: Well, we have two. We historically had two plants in Texas. We have one Texas Chocolate Bayou plant, we still operate Texas City, which Monsanto owned up until 1985, I believe.

Q: Were those files searched?

A: Well, as I understand it, the Point

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Comfort, Texas plant which was one subject of inquiry in the subpoena is located not too far from Monsanto's Chocolate Bayou plant and there might have been information in files relating to Chocolate Bayou that would reflect on the Point Comfort plant.

Q: Were such files found?

A: I think we found one document that referred to the Point Comfort plant, an NPDSE permit application that was filed on behalf of the Chocolate Bayou plant that mentioned the Point Comfort plant. I can't recall as I sit here any other documents that were located.

Q: When the plant closes where if anywhere are the files sent to?

A: Can you define what you mean more precisely what it means by closes, because it makes a difference.

Q: Rather than me attempting to define it, would you clarify how you would interpret when a plant closes, the different scenarios?

A: There were two that occurred to me that could be comprehended within the term "closed." That would be if we sold a plant and ceased our ownership over it or if the plant was physically

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shut down and no longer operated at all.

Q: When a plant -- when a Monsanto plant is no longer operated and shut down permanently where if anywhere are the Monsanto materials that are maintained at that plant sent?

A: Most likely any documents that would be retained would come to St. Louis. Where in St. Louis would depend upon the type of documents you're referring to.

Q: To an off-site document storage facility or to a facility -- you used the term corporate headquarters at 800 North Lindbergh -- or some other location?

A: It would be either one of the two. Either the long-term document storage facility, the Westport, or to our corporate headquarters, again, depending upon the nature of the document that you're talking about.

Q: The document storage facility, the Westport, is a large facility for many documents, is that correct?

A: That's correct.

Q: How did the team that you've identified go about determining how best to search for responsive materials in this storage facility?

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MR. CARNEY: Are you talking about Westport?

MR. SEIFE: That's correct. The off-site facility in St. Louis County.

A: That effort was undertaken, as I recall, on two fronts. First was to isolate to the extent that we could within the Westport document center documents that related to Leonard Construction Company, we reviewed -- by we I mean the folks that work for me -- reviewed other document transmittal sheets which is what we call the indexes that you referred to earlier to determine whether there were any documents that related to the Point Comfort, Texas location. Those were the two main prongs of inquiry that were initiated at that Westport facility.

Q: (By Mr. Seife) And what were the results of such efforts?

A: Well, we discovered about, I guess, a banker's box full of documents relating to the construction of the Point Comfort plant, Point Comfort, Texas facility.

Q: What type of documents were they?

A: There were a lot of engineering drawings and memoranda, construction, blue prints, things

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like that.

Q: Were any of these materials withheld from production?

A: No, not those.

Q: You referred to the document transmittal sheet as a guide to locate documents?

A: That's correct.

Q: Were there any document transmittal sheets that referred to Leonard Construction and/or Point Comfort representing or providing some evidence that there may be a document that exists but the document was not to be found in the actual stored facility?

A: I can't answer that question, Mr. Seife.

Q: I'm not asking about the document, maybe a box of documents missing or more than one or two sheets of paper.

A: Right, I understand your question and that's not an operational detail of the search that I just don't have in my head.

Q: If a box or two were missing, would you have been informed of that?

A: I believe I would have, yes.

Q: Any other searches at the Westport facility for boxes other than the Leonard Construction

materials?

A: I believe that there may have been other minor inquiries made of Westport but those were the two main things that I recall a search of Westport was made for.

Q: Was any search of Westport made for PCB documents as you use that term?

A: No.

Q: Why?

A: Because we have done that search many times in the past and I am satisfied that all of the PCB related documents -- that all of the documents that relate to Monsanto's manufacture and sale of PCB's have been consolidated in the archive that I have in the law department.

Q: Did you have any responsibilities as custodian of records similar to the responsibility you have which brought you to this subpoena for those searches for PCB documents that have been performed in the past?

A: You're going to have to run that by me again.

Q: You testified -- you testified that there were PCB document searches performed at the Westport facility, is that correct?

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A: In the past, that's correct.

Q: Did you have any responsibility for supervising or overseeing such searches?

A: Yes, those were conducted by people working for me at my direction.

Q: Were these materials -- these -- you referred to them loosely as PCB documents.

A: That's fine.

Q: Were these PCB documents ever produced in any of the litigations that you've provided your testimony in?

A: I can answer it this way: We have produced documents relating to PCB's in many other proceedings, whether the documents that were produced came from Westport at some point, I don't know. All I can say is that a comprehensive search was conducted in each case and documents that were found to be responsive were produced.

Q: These PCB documents, are they currently maintained by Monsanto?

A: Yes.

Q: And where are they maintained?

A: They are maintained at 800 North Lindbergh Boulevard, our corporate headquarters.

Q: In what fashion are they maintained? In

your shelves, are they in banker's boxes, cardboard boxes?

A: They are in cardboard banker's boxes on shelves in a large room.

Q: Do you know the volume of the materials in the large room?

A: Something approximating a million pages.

Q: Do you know approximately how many boxes?

A: I don't.

Q: Is there an index of these materials, PCB documents?

A: No, there's not a written index.

Q: Is there a log by box number or some other method to keep track of the inventory of boxes?

A: There's another method of keeping track of the documents.

Q: What is that method?

A: We have a computerized litigation support system.

Q: Does this computerized litigation support system track what portions of these PCB documents have been produced in the past and in what matters?

MR. CARNEY: Let me object here, you're starting to get into an area that is work product in connection with litigation. I may let you get

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this question but you're quickly going over the line on that and we'll have to cut you off.

MR. SEIFE: Okay. I'm pursuing this line of inquiry with respect to the claims of burden.

MR. CARNEY: Well, I think that is not an area that is subject to the inquiry today. At least that's my understanding.

MR. SEIFE: I beg to differ, but I'll proceed and we'll see what happens.

Q: (By Mr. Seife) Is there a method that Monsanto can use to determine what PCB documents have been produced by Monsanto and in what matter?

A: I can -- yes, there is a method by which I can determine that.

Q: Do you need to take a break?

A: I'm doing okay. If you'd like one, feel free.

Q: I'm ready to go, move along.

(Discussion off the record.)

MR. SEIFE: Back on the record.

Q: (By Mr. Seife) You've used the words archive of PCB documents as a collection you've been testifying to, is that correct?

A: That's correct.

Q: Now, there were research in the corporate

headquarters of the files of the environmental group. Does the environmental group have a technical case name to it other than environmental group?

A: There are probably two or three environmental groups that I had in mind. The one is the environmental operations group in the chemical company, the other would be the environmental law group, and the third would be the -- what is it called -- environmental affairs group.

Q: Before we proceed, one other question for now on the PCB documents. Is it correct to assume that the PCB documents contained in that collection were made available here pursuant to the subpoena?

A: I'm sorry?

Q: Excuse me. Were any of the PCB documents produced pursuant to the subpoena to Monsanto in this action?

A: Were any of the PCB produced pursuant to the subpoena?

Q: Correct.

A: They were produced pursuant to the agreement that your office reached with Mr. Merrill.

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Q: Referring to the million or so pages of PCB documents?

MR. CARNEY: Were some documents out of that collection produced pursuant to the agreement?

MR. SEIFE: Correct.

A: Right. The PCB documents that we produced here were from that collection, yes.

Q: (By Mr. Seife) That was my next question.

A: Yes.

Q: What files of the environmental operations in the chemical company were searched?

A: Those would have been the files relating to operations in Texas.

Q: The two plant operations that you testified to?

A: That's correct.

Q: What were the results of such searches?

A: I don't know whether the documents -- whether that, for example, NPDSE permit was found there or in the environmental office files.

Q: Were any operations files -- were any documents --

A: I don't believe so.

Q: I was just going to instruct you, please allow me to fully ask my questions so the court

reporter --

MR. SEIFE: Let's go off the record.

(Discussion off the record.)

Q: (By Mr. Seife) I will repeat the question that I was asked of you because the court reporter wasn't able to transcribe the entire question because you were speaking at the same time. The question, I believe, was: Were any environmental operation files in the chemical company produced pursuant to the subpoena?

A: I don't recall whether documents from those files or from the environmental law files yielded that NPDSE permit that I referred to earlier.

Q: You referred to environmental operations in the chemical company, what is the chemical company?

A: The chemical company is a business group within the larger Monsanto Company. Broadly it is that part of our business that is engaged in the production and sale of industrial chemicals.

Q: Were there any business groups searched other than the chemical company business group?

A: Well, Leonard Construction Company and Enviro-Chem.

Q: And those two, I take it, would be separate business groups?

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A: Well, they are not part of the chemical company, that's correct.

Q: My question is: Were there any other business groups searched?

A: No, just chemical company operations.

Q: What specific files of environmental operations were searched?

A: I don't have that detail.

Q: Do you know who would?

A: Probably Mr. Farroll or Ms. Wooten.

Q: Were there any instructions given to any of these files as to certain files to search?

A: No, their task was to review all of the files that they felt might reasonably contain information that we had agreed to produce and to gather those documents and assemble them for review. There were no restrictions on what they could look at or not look at.

Q: Did the members of your staff who actually performed the searches have a copy or a portion of the subpoena that's been marked as Exhibit A here with them as a guide?

A: I believe so, yes, that's our normal operating procedure.

Q: What is your normal operating procedure

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when a subpoena is served upon Monsanto requesting production of documents?

A: Well, when it comes into the office I usually make a determination as to who in terms of a lawyer or a legal assistant will be working on gathering the information. The subpoena is given to those individuals and instructions on what information -- what kinds of information are to be gathered are given and then the search is conducted and the information or documents are assembled.

Q: What instructions were given to the team on the information to be gathered here?

A: Well, specifically I'm not going to tell you the specific words because I think that would invade a privilege. In general, the individuals were instructed to gather the kinds of information that we agreed to produce.

Q: Were there any individuals on the staff of Monsanto that preformed searches that were not -- that are not employed by Monsanto in-house -- withdrawing the question. It was turning to be very awkward. Monsanto has an in-house counsel, is that correct?

A: We have an in-house staff of lawyers, that's true.

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Q: Anyone participate in the search other than the in-house staff of lawyers or their support staff?

A: No.

Q: When was the team first asked to perform the search?

A: When?

Q: Correct.

A: Not too long after the subpoena was served on us.

Q: Over what period of time was the search performed?

A: About a three-week, four-week time period.

Q: Were any of these individuals working on the task on a full-time basis?

MR. CARNEY: At any point in time or are you talking about the entire four weeks?

MR. SEIFE: I'll have the witness clarify. I'm trying to get the number of hours undertaken to perform the search during the three-, four-week period.

A: I think for a portion of that three people were more or less full-time. I mean, there may have been other small tasks that they devoted attention to, but for, I would say, probably about

two weeks Ms. Wooten and, I think, Ms. Derback devoted, I would say, the vast majority of their time to this project.

Q: I may have missed a name but you did mention just now a Ms. Booten?

A: Wooten. Connie Wooten.

Q: Sorry, I thought you said B.

A: I'm sorry, it's my cold.

Q: Did there come a point in time when the search was completed?

A: Yes, there did.

Q: When was that?

A: Specifically I couldn't tell you, Mr. Seife.

Q: Maybe a better question is is any part of the search still ongoing?

A: No, not at this point, no.

Q: A document was made available today, it has a Bates stamp No. ALAC 0003513 through 14. This was handed to me, I think, by your counsel. When was this document located?

A: That document was located during the document search that I referred to earlier. We had looked at it because we thought it might be a document that contained annotations made by a

lawyer. We determined that it probably was not so we produced it, but it was undergoing privilege of evaluation, which is why it was produced this morning rather than with the documents that were earlier produced.

Q: This document has a caption "Mutual Release" and it has signatures limited to the company of Monsanto and Alcoa but is not signed. Do you know if this document, that mutual release, was ever executed by Alcoa or Monsanto or both?

A: I do not know.

Q: Do you know who would know?

A: No, not for a fact, I do not.

Q: Do you know who might know who would know?

MR. CARNEY: Objection. Calls for speculation.

MR. STOCKMAN: Join in that objection. I think that goes -- I think he's been instructed not to speculate according to the protocol.

Q: (By Mr. Seife) I'm not asking you to speculate. There might be someone in your staff that might have knowledge more intimate than your knowledge regarding this document.

A: No one on my staff would have no greater detailed knowledge of that than I have.

Q: Who located the document?

A: Mr. Farroll or Ms. Wooten, one of those two.

Q: Where was it located specifically?

A: It was located in one of the files in one of the lawyers in the chemical group's. It was not a forms file and because it came from the files of an attorney we scrutinized it to make certain there -- or make a determination whether it had protected material in it.

Q: This is a lawyer's file, a lawyer within the environmental operations in the chemical company?

A: Within the chemical company, right, who provides counsel to environmental operations.

Q: Were any other documents produced from the individual files other than this document that you made available today?

A: I don't believe so, no.

Q: Were there any documents compiled as a result of the searches performed by your team that were not produced and that were not listed on the privilege log produced by your counsel?

A: There may have been some that were not responsive. I have a little -- well, you know, the

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document collection and assembly process is a multistep process. Obviously, a large number of documents were reviewed which were not produced and were not listed as privilege because they were not responsive, but there were two or three steps along the way where that determination is made.

Q: You identified the five step process performed by your -- the five step normal operating procedure, do you recall that testimony?

A: Yes.

Q: Was the normal operating procedure followed in this case?

A: Yes, it was.

Q: The fifth step is the compilation of the documents, is that correct?

A: For review by counsel, that's correct.

Q: Now, were any of the documents ever compiled in this project not produced or not listed on the privilege log?

A: There may have been some that were deemed not responsive.

(Defendant's Deposition Exhibit B marked for identification.)

Q: Court reporter has marked Exhibit B to your deposition today, a February 14th, 1995, letter

from Charles E. Merrill to Susan McNeill of O'Melveny & Myers, CC Mark E. Haddad who was Alcoa's counsel February 14th, 1995. Attached to it is a two-paged document with the caption, "Monsanto Company Privileged Document Log." I hand you Exhibit B and specifically the last two pages of the privilege log. Do you recall having seen this document before today?

A: Yes.

(Discussion off the record.)

MR. SEIFE: Back on the record.

Q: (By Mr. Seife) There are eight documents listed on the log, is that correct, sir?

A: Yes.

Q: Were any of these documents found in the PCB document archive files?

A: I don't believe any of these documents are PCB related documents, no.

Q: Were any of these documents found in the files of Leonard Construction related to the Point Comfort operations?

A: I think some of them may have been.

Q: Which documents?

A: Just looking at the list right now, Mr. Seife, I couldn't identify them for you, but in

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general, these did relate to the Point Comfort topic as opposed to the PCB topic that we produced documents for.

Q: Does Item 1 fall into that category?

A: I believe it does.

Q: Do you know when this document was located?

A: When it was located?

Q: Where it was located from, where was it found?

A: Where was it found? It would be one of two places. It would be either with the documents relating to the Leonard Construction Company activities or in what we call our vault, which is a place at Monsanto where we store documents which are important to the conduct of our business, like contracts, deeds, matters that relate to actions of the board of directors, things like that.

Q: Was the vault searched?

A: Yes.

Q: Would that be another area within corporate headquarters that was searched?

A: Yes, and my recollection is refreshed that we did look in the vault.

Q: Were there any other areas other than the six that you've identified that were searched that

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now come to your mind?

A: No.

Q: Who is W.H. Schneider?

A: Mr. Schneider is a retired lawyer.

Q: Was he ever employed by Monsanto?

A: Yes, for many years.

Q: What was his title when he last retired -- when he retired?

A: Assistant company counsel, I believe.

Q: For what entity?

A: For the chemical group.

Q: Of Monsanto?

A: That's correct.

Q: Who is Ann Clark?

A: Ann Clark is a legal assistant. She currently works for me.

Q: Who is K.R. Barnickol? B-a-r-n-i-c-k-o-l.

A: Kurt Barnickol is a lawyer, currently works at Monsanto.

Q: His title?

A: He is associate general counsel, corporate.

Q: Was Mr. Schneider contacted at all regarding the search for documents responsive to the subpoena?

A: I don't believe so, no.

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Q: Were any former employees contacted during the search for responsive documents?

A: I don't know whether any former employees were contacted or not. I don't know the answer to that question.

Q: Who would know the answer to that question?

A: Mr. Farroll, Ms. Wooten, Ms. Niblock.

Q: Mr. Barnickol is associate general counsel for Monsanto?

A: That's correct.

Q: Who is R.C. Loyer? L-o-y-e-r.

A: Ray Loyer is a lawyer in the patent department.

Q: Of Monsanto?

A: That's correct.

Q: W.D. Lambert, who is W.D. Lambert?

A: Bill Lambert is another lawyer in Monsanto's law department.

Q: R.H. Shear, who is R.H. Shear?

A: Mr. Shear is another lawyer in Monsanto's patent department.

Q: P. L. Passley, P-a-s-s-l-e-y -- or P. L. Passley?

A: Mr. Passley is a business person at Monsanto. I don't know his title.

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Q: Currently employed?

A: I believe so, yes.

Q: Who is R.A. Stohr.

A: Richard Stohr is a retired lawyer. He was a member of Monsanto's law department for many years.

Q: Who is J.D. Anderson?

A: I don't know who Mr. Anderson is.

Q: Was any searches to determine -- searches made as to this individual's identity for purposes of responding to the subpoena in preparing the privilege log?

A: I don't know the answer to that question.

Q: Who would know?

A: Mr. Farroll, Ms. Wooten, and Ms. Niblock.

Q: To approximately two of the questions you've identified those three individuals. All those individuals -- or may one of those individuals --

A: Maybe one of those individuals would know.

Q: Who is A.E. Hoffman?

A: Hoffman was a business person at Monsanto.

Q: What group?

A: The chemical group.

Q: Who is H.R. Huff?

A: That is not a name that I'm familiar with.

Q: Do you know who would know that answer to the identity of this individual?

A: One of the three individuals that I previously named; Ms. Niblock, Mr. Farroll, or Ms. Wooten.

Q: Who is E.J. Mackie?

A: Mr. Mackie. I think he's retired now, but he was with the chemical group.

Q: As a business person?

A: As a business person.

Q: M.A. P-i-e-r-l-e, who is that individual?

A: Michael Pierle is currently our vice president, foreign environmental affairs. At this time he was the director of environmental operations for the chemical company.

Q: Were the individuals Gilhousen, Liebman, and Park attorneys in-house at Monsanto at any point in time?

A: Yes, Mr. Gilhousen currently is our assistant general counsel for environmental law. Mr. Liebman and Mr. Park are both retired Monsanto lawyers.

Q: Were any of these individuals listed here on the privilege log that you have marked as

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Exhibit B to your deposition contacted for purposes of responding to the subpoena?

A: I'm not quite sure what you mean by contacted.

Q: Contacted by letter or by phone or in person for any purpose regarding this subpoena that's been marked as Exhibit A.

A: The retired people, probably not. People who currently work at Monsanto may have been contacted in connection with the file search. For example, Mr. Gilhousen's area, the environmental law group, was inquired of as to whether they had any responsive documents there. Whether they talked -- whether Mr. Gilhousen himself was spoken to, I don't know.

Q: Turning back to the various areas at the corporate headquarters that were pursued and searched -- we've touched upon two so far. The environmental law group was the next area that you've testified to as being searched. What if any materials were found in the environmental law group?

A: I believe I testified earlier that the NPDSE permit that referred to the Point Comfort, Texas, Alcoa location may have come from

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environmental law files. I'm not certain whether it came from there or from environmental operations.

MR. SEIFE: May I have the question read back, please?

(The requested portion of the record read by the reporter.)

Q: (By Mr. Seife) What files maintained by the environmental law group were searched?

A: I don't have that detail. In general, again, not by name but in general it would have been files relating to operations in Texas.

Q: Does the environmental operations or environmental law group have any files regarding Leonard Construction?

A: The environmental law group may have, I don't know.

Q: Were those files searched?

A: If they had files which related to one of the topics that we agreed to produce information on, yes, it would have been searched.

Q: Are you confident that every step was taken to locate in Monsanto's possession today any materials regarding Leonard Construction activities as it may relate to Point Comfort?

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MR. CARNEY: I'm going to object to the form of the question, it contains undefined terms, as vague.

A: I am confident that reasonable efforts were taken to locate that information, yes.

Q: (By Mr. Seife) What files, if any, were searched of the environmental affairs group?

A: Environmental affairs? It would have been the same general topics; would have been operations in Texas or information relating to the Leonard Construction Company.

Q: The third area within corporate headquarters that you've identified is the archives of documents regarding insurance litigation.

A: Yes.

Q: Where are these materials housed?

A: They are housed at our corporate headquarters; 800 North Lindbergh.

Q: Specifically where within corporate headquarters?

A: In a building called N Building.

Q: Is there a particular group or department that maintains these files?

A: They're in the custody of the law department.

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Q: Of which you are a member of?

A: That's correct.

Q: And why were these materials searched?

A: Because they -- that archive collects or has collected a large amount of information relating to Monsanto operations across the country, environmental topics, and it's a very comprehensive source of information for a variety of things related to those topics.

Q: Do I understand you correctly, you said archive documents regarding insurance litigation or did I misunderstand that?

A: No, that's correct.

Q: Were any documents located that are responsive to the subpoena that were made available and produced in this litigation?

A: I don't believe that any documents came -- that we produced here today came from that archive.

Q: Is there an index listing, computer printout, serving as a guide for or of these materials --

A: I believe there are several forms of indexes that relate to that archive.

Q: -- to identify all the forms of indices?

A: I don't know that I can give you all of the

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forms but there are written indices for the documents as well as a computerized litigation support system for some of the documents, not all of them.

Q: Is it the same system that you've identified before or is it a different computer litigation support system?

A: Well, it's both the same and different. It is not -- there are more than one such system at Monsanto, but they are similar in many ways.

Q: Who's the custodian of the records maintained on the computer system?

A: Which computer system?

Q: The one found that stores the information regarding the archives of documents regarding insurance litigation.

A: That would be Mr. David Snively.

Q: Could you spell his last name?

A: S-n-i-v-e-l-y.

Q: What is his title?

A: Litigation counsel.

Q: The first computer data base that you've testified to, who's the custodian of records of that data base?

A: I take it that was the PCB documents data

base, is that correct?

Q: That's correct.

A: I am custodian of those records.

Q: Were there any other document data bases other than those two that you've testified to that were searched?

A: I don't believe so.

Q: Who's the custodian of the archive documents regarding the insurance litigation?

A: I just told you; Mr. Snively.

Q: I believe my question was that he was the custodian of the data base but he's the custodian of hard copy of the documents as well?

A: Yes, he is.

Q: Fourth area within corporate headquarters is the environmental operations files. Where are they maintained?

A: They are maintained at corporate headquarters in G and F Buildings at Monsanto.

Q: What group or department is responsible for the maintenance of these files?

A: That's the chemical group.

Q: Any particular individual of the chemical group?

A: Well, there are several business units

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within the chemical group that all of which are responsible for maintaining the environmental operations files pertinent to their business operations.

Q: You used the term "files," are there more than one collection of environmental operation files within this group?

A: Yes, and just let me digress a little bit to elaborate on that. The chemical group is organized into business groups relating to products that are manufactured and sold by that group and the support staff is associated with each of those business groups, environmental operations being one such support staff for each of those groups, so there are -- I don't know how many business groups there are currently. There are several. I don't know the exact number, so there would be several environmental operations type files that would be inquired of.

Q: Were you able to identify each of the environmental operation files that were being inquired of?

A: No, I know there are probably four or five corresponding to the business groups.

Q: Are there separate custodians of records

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for each of these four or five environmental operation files?

A: There are many. Each individual who functions in that capacity would be responsible for maintaining his or her files.

Q: Were these files searched for responsive materials?

A: If it was reasonably believed that there would be responsive information, yes.

Q: How was it determined whether it was reasonably believed that there were responsive information?

A: The nature of the business operations, their location, the kind of products, the relationship, if any, to Leonard Construction Company.

Q: Your staff that performed the searches, did they seek the assistance of any individuals within these departments that the searches were performed in?

A: That would be our usual practice, yes.

Q: Were any responsive documents found in these environmental operation files?

A: I don't believe so.

Q: Were any responsive documents found in the

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vault area?

A: I don't think we found any responsive documents.

MR. SEIFE: Let's take a short break and not so much for us but maybe the court reporter needs a break.

(Recess.)

Q: (By Mr. Seife) During the break I turned for you to Page 3 of Tab A of Exhibit A, caption on the top of the page is "Documents Requested." Prior to today have you read Pages 3 through 10?

A: Yes, I have.

Q: Did Monsanto search for documents requested in Section 1-A through T?

A: Certain sections, yes. My recollection is that Mr. Merrill and Ms. McNeill discussed which of those subsections Monsanto would search and produce responsive material for. I don't have that item by item list in my head but I know that we did search for and produced documents in response to many of the subsections of Paragraph 1.

Q: What subsections were documents then searched for?

A: I just said I don't have that in my head. That would be contained in correspondence between

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Mr. Merrill and Ms. McNeill.

Q: Okay. I understand that and I wasn't asking to trick you but I believe the question was slightly different.

MR. SEIFE: If we can stipulate on the record that all subsections of Section 1 were agreed upon to be searched and produced -- maybe we can go off the record for a moment.

(Discussion off the record.)

MR. SEIFE: Let's go back on the record.

Q: (By Mr. Seife) Counsel, your attorney has shown you the January 24th, 1995 letter from Charles E. Merrill to Susan McNeill. Have you ever seen that letter before today that your counsel just showed you?

A: I don't recall whether I saw that or not or whether I simply discussed the matter with Mr. Merrill.

Q: Paragraph 2-A, Page 2, reads, "Monsanto will produce the following non-privileged documents from its records kept in the ordinary course of business, a) documents responsive to Request No. 1 and from all subparagraphs thereof." I redirect your attention to Paragraph 1 and all subparagraphs thereof, Paragraphs A through T. Were there any

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subparagraphs, any portions of the request set forth in Paragraph 1-A through T that were not searched for and produced?

A: I believe the answer to that question is no.

Q: Let's just go specifically subparagraph by subparagraph. 1-A, were documents searched for and requested in 1-A?

A: We would have searched for and produced anything we found on that.

Q: Were documents produced?

A: Were documents produced? I believe so, yes.

Q: Responsive to 1-A?

A: Well, responsive in general to the construction and operation of the Point Comfort plant, yes.

Q: 1-B, same question: Were any documents searched for materials requested in 1-B?

MR. CARNEY: Let me just -- it may shorten things. First of all, I think he said there was a search for all subparagraphs of Paragraph 1 of the request and I do have an index I'd be glad to give you if it will help shorten things of what documents, Bates stamp numbers, were responsive to

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what requests.

MR. SEIFE: That would be fantastic. This is my only other copy.

MR. STOCKMAN: Or maybe we can just mark it as an exhibit as it would be copied right in the transcript.

(Defendant's Deposition Exhibit C marked for identification.)

Q: (By Mr. Seife) Court reporter has marked as Exhibit C to this deposition a one-paged document captioned "Index" made available by your counsel today. Have you ever seen this document before today?

A: Yes.

Q: Who prepared the document, if you know?

A: This document was prepared by counsel.

Q: In-house counsel or --

A: Outside.

MR. STOCKMAN: And just maybe before we go on I presume that this is without waiver of any work product privileges?

MR. CARNEY: Yeah, it was really done at Mr. Bistline's request and to expedite the deposition figuring that this might be an inquiry and it would maybe assist in getting the deposition

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done quickly and was intended not to waive any privilege.

MR. STOCKMAN: I assumed that was the case but I thought it might be helpful to get that on the record.

MR. CARNEY: I appreciate that.

Q: (By Mr. Seife) Direct your attention to paragraph 1-H.

A: 1-H on Page 4 of the subpoena?

Q: That's correct. Which reads in full: "All purchase orders and invoices regarding Monsanto's sale of PCB's, Pydraul, Pyranol and all other PCB containing fluids for use at the Point Comfort facility."

A: Yes, I see that.

Q: What if any efforts were undertaken to search for materials sought in Section 1-H?

A: Well, as I believe I previously testified all of the documents that relate to Monsanto's manufacture and sale of PCB's that currently exist are, I believe, in my archive in the law departments at Monsanto and we searched that archive for documents that would be responsive to Paragraph H.

Q: What was the result of such search?

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A: If you look at the index, Paragraph 2 in the index, I believe, numerates the documents that we've produced in response to 1-H.

Q: How is a determination made to group those requests into paragraph No. 1 to Exhibit C?

A: I'm not sure I understand your question.

Q: It's awkward. I'll try to clarify it for you. Exhibit C has five numbered paragraphs?

A: That's correct.

Q: Within each paragraph there's a request number which am I correct to assume that the request numbers refer to the request set forth in Exhibit A to the subpoena?

A: That's correct.

Q: Was there a reason that Request No. 1-H was listed separately in Paragraph 2 as opposed to being included within the other subparts of Request No. 1?

A: I think broadly what was done here was to separate the -- what I would characterize as documents relating to PCB's -- from those documents which do not relate to PCB's and Subparagraph H requested specifically some PCB related documents so that was listed separately on the index.

Q: In Paragraph No. 2?

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A: In Paragraph No. 2.

Q: Is there any other numbered paragraphs that have listed documents or corresponded documents regarding PCB's other than that listed in Paragraph 2?

A: Let me just look and see. Paragraph No. 3 of the index, Exhibit C, refers to Request No. 4 in the subpoena and Request No. 4 relates to the delivery or handling of PCB or PCB containing fluid to the Messina facility. And Paragraph No. 4 refers to Request No. 5 of the subpoena. Paragraph No. 4 on Exhibit C refers to Request No. 5 of the subpoena and, again, Paragraph 5 in the subpoena seeks information about the delivery or handling of any PCB or PCB containing fluid at the Vancouver facility.

Q: What does Paragraph No. 5 -- withdrawn. What does Paragraph No. 1 refer to -- withdrawn again. Is there a specific subject grouping in the materials referred to in Paragraph 1 to Exhibit C?

A: My recollection is -- of those documents is that in the main they referred to the Leonard Construction documents we discovered that have to do with the construction of the Point Comfort facility for Alcoa.

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MR. STOCKMAN: Meaning the Point Comfort chlor-alkali plant?

THE WITNESS: Correct.

MR. SEIFE: Counsel, please, you'll have the opportunity to examine the witness.

MR. STOCKMAN: I was just attempting to clarify, it would be easier to do it now than do it later.

MR. SEIFE: I beg to differ. If you can please refrain from examining the witness until it's your opportunity to do so.

Q: (By Mr. Seife) Counsel for Alcoa referred to the Point Comfort chlor-alkali plant. The Point Comfort facility of Point Comfort has been defined in the definitions and instruction section, Paragraph 3-E.

A: Do you have a page reference?

Q: Page 1, Exhibit A, page following the A tab.

A: Okay.

Q: Have you seen that definition before today of the Point Comfort facility?

A: Yes.

Q: Did you follow that definition in your search for materials regarding the Point Comfort

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facility?

A: Yes, anything that related to Point Comfort that we found was produced. It happened to be, as I recall, a chlor-alkali plant.

Q: Correct. And there are other operations at the plant -- and there are other operations at the plant that use PCB's, so I want to get an assurance and understanding from you that the inquiry was not limited to the chlor-alkali plant.

A: That's correct.

Q: Paragraph 1-J refers to the entity Denora. Page 4.

A: Paragraph 1-J?

Q: 1-J as in John.

A: Right.

Q: Were any of the searches performed specifically targeted to seek materials regarding Denora?

A: Yes.

Q: What were the results of such searches?

A: I don't recall that we found anything specifically relating to Denora. I could be wrong but I don't recall seeing any.

Q: Paragraph -- Subparagraph O of Section 1, Page 5; any contracts between Monsanto and Texas

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Brine.

A: Right.

Q: Were any searches performed regarding Texas Brine?

A: Yes, we looked for material relating to Texas Brine.

Q: What were the results of such search?

A: As I recall the documents, there weren't any discovered.

Q: Were any searches performed regarding documents requested in Section 2, Page 6 of Exhibit A?

A: My recollection is that we agreed to disagree on that.

Q: My question was: Were any searches performed?

A: The answer to that would be no.

Q: If a search was to be performed today following your normal operating procedure as you've defined for document searches, where would you instruct your team to search for information responsive?

A: Well, the search that we would have to conduct would be extremely extensive. We would first have to determine which Monsanto locations

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used or produced mercury and then we would have to inquire of those locations and we have some, maybe, between 20 and 30 operating plants in this country and another dozen or so worldwide. Conceivably we could go worldwide on a search like that as well as documents in Monsanto's world headquarters in the chemical group, possibly the agriculture chemicals group, although I don't know, and the safety and environmental health area and our research libraries and in the medical and toxicological libraries that we have.

Q: You referred to world headquarters, is that the facility that is in St. Louis that you work out of?

A: Our 800 North Lindbergh. That's our world headquarters. As well as checking through the transmittal sheets for the Westport facility to see if there's anything in there.

Q: Similar to the search performed for responding to the request in Sections 1-A through 10?

MR. CARNEY: You're referring just to the latter part of his answer?

Q: (By Mr. Seife) I'll clarify that. With respect to the search of the document storage

facility off-site in St. Louis County, would similar methodology be performed to search for documents responsive to Paragraph 2 as that search was performed for documents responsive for the materials requested in 1-A through T?

A: The methodology would be similar but the scope of the search would be much broader.

Q: Are there any computer data bases that can be searched to seek the materials responsive to those sought in Section 2?

A: The only one that I believe would be available to search would be the data base that contains some of the environmental insurance litigation related documents. All the areas that we would have to search would have to be done by hand.

Q: Has Alcoa -- withdraw it. Has Monsanto ever produced in any litigation any of the materials sought in Section 2, Page 6 of Exhibit A?

A: To my knowledge, no.

Q: Did you make any inquiry in reaching that conclusion?

A: Yes, I did.

Q: Have any of the materials -- any portion of the materials or documents requested in Paragraph 2

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ever been searched for and compiled before today?

A: To my knowledge, no.

Q: Did you make any inquiry into -- what is the basis of your knowledge?

A: I inquired of the other lawyers on Monsanto's litigation staff whether they had had a request for documents relating to mercury and the answer was no.

Q: Were any former employees contacted to make a similar inquiry?

A: There's no need to do that because the institutional memory is covered by the people who are currently working in the litigation group.

Q: Thank you. Has any determination been made that Monsanto does in fact have materials responsive to the request set forth in exhibit -- in Item 2, Page 6, Exhibit A?

A: Yes, we most probably do have some material. I don't know how much, but there will be some.

Q: And might some of those materials exist in the Monsanto corporate headquarters or the off-site storage facility?

A: Both places.

Q: How would you go about determining where to

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first look at Monsanto corporate headquarters for information responsive?

A: I'm not quite sure I understand how would I determine where to first look.

Q: If you were asked to search for information and documents responsive to the request set forth in Paragraph 2, and your search was limited to world headquarters and the chemical group, you start out tomorrow morning 9 a.m., how would you go about doing that to perform that search?

MR. CARNEY: I'm going to object. I think it calls for speculation and also I think it may be beyond the scope of this deposition. It's my understanding from Mr. Merrill that issue of the burden of producing documents that we were not required to produce up to this point was not a subject matter of this deposition. I don't want to be overly strict on that because I'd like to be cooperative so I will not instruct on this question.

MR. SEIFE: Counsel, I direction your attention to our February 10th letter to your counsel, Charles E. Merrill, Paragraph 2, and specifically 2-C, Page 2, which reads in total: "The deposition, Monsanto custodian will testify as

to the following: CC concerning the location, nature, and record retention policy of Monsanto with regard to the documents requested by the subpoena in its entirety."

MR. CARNEY: Well, do you have a signed letter on that? My understanding was that there was no agreement with regard to the entirety of that letter. I may be wrong. If you have one I'll retract that and I will -- again, I was not the party involved in the discussions on the scope of this deposition. We had actually preferred to postpone the deposition so Mr. Merrill would have been here and we wouldn't have any dispute because he had a commitment so I'm kind of pinch-hitting on this one so I may be operating at a little disadvantage, but that was my understanding from Mr. Merrill. Again, I guess these discussions -- neither party of the discussions are present today so we may all be operating from a little disadvantage but I'm not going -- you know, if we're not getting into a lot of inquiry here I may allow some inquiry on that subject but I don't think there was an agreement to that subject.

MR. SEIFE: Discussions such as these I prefer to have off the record but since it's on the

record I need to respond to it. Mr. Merrill set today's date. The deposition has been postponed on several occasions, it was set far enough in advance so the fact that he's not here I shouldn't believe it shouldn't impede the parties of a sufficient examination of Monsanto having this deposition done within an efficient manner. The fact that Mrs. McNeill isn't here is irrelevant. I'm here and I'm representing my client's interest as she is so that's not a problem.

With respect to Mr. Merrill's February 14th letter he referred to February 10th, there have been no conversations regarding the parties concerning our letter dated February 10th and now I ask you -- I have a copy here Monsanto consented and agreed to and I want you to sign off on the letter.

MR. CARNEY: No. It's my understanding that we did not agree to it and did not sign the letter. Do you agree with that?

MR. SEIFE: Not at all. I don't have a signed copy but there have been no stated objections to the letter so I'm asking Monsanto to sign the letter so we can proceed with the deposition.

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MR. CARNEY: I'm not going to sign the letter. Mr. Merrill, if he did not sign it, he intended not to sign it.

MR. SEIFE: What portion does Monsanto not agree to the terms of the --

MR. CARNEY: If you want to mark all the letters and make them a part of this record that's fine. I was not a party to these discussions and all I have to go by is what's in the letters but I do recall that Mr. Merrill specifically said that the issue of the burden was not, as I understood his comment, that it was agreed that that would not be subject to this -- subject matter for this deposition but at least that's my understanding of what he told me yesterday.

MR. SEIFE: Well, he might have conveyed something to you that he had not conveyed to us. It's one of an important purpose of this deposition to pursue that exact inquiry because we have a dispute here and the whole purpose of the proceeding of this deposition now is to best define the dispute and try to resolve it in an agreeable fashion.

And, again, I ask that Monsanto sign off on this agreement or if not so state the objections so

we can proceed efficiently here with this deposition that's been noticed quite a while ago and was postponed for quite some time and we need to proceed with this and I came out here and the last communication was the February 14th, the letter marked as Exhibit B, and there have been no stated objections to the letter. I'll proceed in that fashion and let's continue with the deposition.

Q: (By Mr. Seife) Sir, sorry for the interruption. Returning back to my inquiry of you regarding what steps Monsanto would take at the corporate headquarters to search for materials requested in Item 2, Page 6, of the Exhibit A to the subpoena marked as Exhibit A.

MR. CARNEY: Same objection as stated before.

MR. STOCKMAN: I'll add to the objection that was asked and answered in large part.

Q: (By Mr. Seife) You may answer the question.

A: We would do several things. I think one of the first things we would have to do whether or not we went outside the world headquarters would be to determine which Monsanto facilities used or

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produced mercury, if any, because that information would guide us in determining which areas of Monsanto's world headquarters needs to be searched.

I would just comment that we have a rather large company involved here. We have approximately, I believe, about 4,000 people who work at our world headquarters. We have many businesses whose activities are supervised from world headquarters and so the search there would be extremely labor intensive and would take a significant amount of time. So just determining what business groups and what individuals within each business group we would need to speak to, we would need also to refer to the research area to find out if any of the processes involved had materials written specifically relating to mercury.

Obviously, our medical and toxicological libraries would be searched and perhaps even the industrial hygiene area to determine whether there were any worker health guidelines that would fall within the scope of Paragraph 2. Those are the things that occur to me just as I sit here.

Q: You referred to the research area and you've also referred to the research library. Are those one in the same?

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A: Not exactly. The research library contains periodicals and notebooks, things of that nature. If there is anything ongoing in research relating to this, that might not be in the library and certainly if we have a current process that involves the use of production of mercury I would believe I would have to at least make an inquiry as to whether there was any research under way that would be impacted by this paragraph.

Q: You've used the -- used the terminology archives. Do you recall using that term generally?

A: I've used that term in several specific contexts, I believe.

Q: How do you -- what is your understanding of the archives as you used it here?

A: Well --

MR. CARNEY: Object because it's been used several times so I think the question is vague and compound, unless you can be specific as to what context you're referring to.

A: That was going to be my next question. Do you have a specific context because I don't believe I've used the term in the overarching sense?

Q: (By Mr. Seife) Are there any areas within the corporate headquarters that maintain materials

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of a historical nature regarding products manufactured by Monsanto or materials used by Monsanto in the manufacture of its products?

MR. CARNEY: Object to the question. I think it's vague and overbroad.

MR. STOCKMAN: I join that objection.

A: There are probably several areas.

Q: (By Mr. Seife) Would you identify those areas for me?

A: The ones that occur to me offhand, and I can't represent to you that this is an exhaustive catalog, but the research library, the toxicology library, the files of the medical department in the occupational medicine department, possibly -- well, certainly the vault would. Then we would have to make an inquiry of each specific business group to determine what historical files they maintain on-site as opposed to having sent off-site for long-term storage. You know, there would be specific other functional areas that might -- you know, I might inquire whether they had any historical materials. Areas like labeling, from time to time we've had a more or less centralized labeling function and whether there was information in that area that would be separate and apart from

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information that would be located elsewhere, that would have to be determined.

Q: What do you mean by labeling function? File labeling?

A: Certain products that we manufacture have to meet government regulations regarding labeling and that requires a certain level of expertise and as a matter of keeping staff costs to a minimum we like to focus that expertise in one area so that we don't have to duplicate in four or five different products.

Q: Directing your attention to Paragraph 6 on Page 7.

A: Yes.

Q: Have you had the opportunity to review Paragraph 6 on Page 7 to Exhibit A?

A: Yes, I have.

Q: Did you perform a search or did your team perform a search for responsive materials sought in Paragraph 6?

A: No.

Q: Why were such searches or requests not made?

A: Because of the burden and the volume of the materials that would need to be reviewed in order

to respond to No. 6.

Q: Are any of the materials responsive to the request sought in Paragraph 6 in Monsanto's possession within the PCB materials that you've referred to?

A: Yes.

Q: How would you go about instructing your team to search for materials sought in Paragraph 6 within the PCB collection?

A: Well, I just, in general, because of concerns about work product privilege I can't get very detailed. I would give them this paragraph and then refer them to this paragraph in the subpoena and ask them to make the appropriate inquiry of the litigation support data base that we have for PCB documents and then assemble responsive documents for review by counsel. I can tell you --

Q: How long would that effort take?

A: I'm sorry, I was not quite finished with my answer.

Q: I apologize. Please proceed.

A: I've finished and I just didn't hear the part of your question.

Q: I will do my best not to interrupt you again. Approximately how long would it take from

your request that a search be performed up to the point where the actual review of the hard copy of the materials would be performed, so that it would be the computer litigation support step of the normal operating procedure?

A: Well, identifying the specific documents and assembling them would probably be a -- it would take a couple of weeks to do that.

Q: My question was the time from the request prior to the actual assembling of the materials.

A: I'm not following you. How long would it take me to ask my people to do this? Not very long, but that's not the real work that's involved in responding to No. 6.

Q: But that wasn't my question, sir.

A: All right. I'm just trying to understand what it is you're asking, because it wasn't clear to me.

Q: Would there be any other -- withdrawn. Would most of the materials responsive to request No. 6 be found in the PCB documents maintained at 800 North Lindbergh Boulevard?

A: I would expect them to be, yes.

Q: These materials are found in one room?

A: One large room, yes.

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Q: All stored in boxes on shelves, is that correct?

A: Many boxes on many shelves, that's correct.

Q: And is the computerized litigation support system in place to track the documents, is that correct? Up and running and operating today?

A: That is correct.

Q: I direct your attention to 7, Subparagraphs A through E. Would the same methodology be followed to search for materials in Section 7-A through E regarding PCB's as that methodology you've testified to with respect to the materials sought in Paragraph 6?

A: Not necessarily.

Q: How would the methodology differ, sir?

A: Referring you to -- well, A, B and C certainly and perhaps D would, in my reading of it, without any modification or limitation on your part require us to go to individual plant sites owned and operated by Monsanto to determine whether that plant site had PCB problems that relate to their use and handling of PCB equipment or PCB fluids that are apart from information relating to Monsanto's manufacture and sale of PCB's. And as you're aware there is a huge body of regulation

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directed at equipment which currently has or in the past has had contact with the PCB's. And as I read Paragraph 7 that kind of information would be required in response to this item.

MR. CARNEY: Let me also object to the question. I don't know that you were trying to trick the witness, I don't think you were, but Paragraph 7 refers to mercury and PCB's. I don't think Paragraph 6 -- were you limiting your question to PCB's?

MR. SEIFE: Counsel, I hope I was quite clear in my limitation in my initial question as solely related to PCB's. If you would like to have the court reporter read it back -- please, let's not interrupt. If you would like you can have the court reporter read back the question. If you have any problem with it please state your objection, but I don't intend to trick the witness, I never intended to trick the witness and it's solely related to PCB's.

MR. CARNEY: I wasn't accusing you of that either. If you listened to my objection all I was saying is if you represent that you did that, I will withdraw the objection.

MR. SEIFE: Thank you.

Q: (By Mr. Seife) That was the representation and I hope you understood in your testimony that it is solely related to PCB's.

A: I did understand that, yes.

Q: (By Mr. Seife) Would part of the effort to search for materials responsive to, I believe, you limited to Paragraphs 7-A through D include the search of the PCB documents?

A: Yes, it would. That would be part of the effort.

Q: Would it be a large part of the effort -- withdrawn. You excluded Subparagraph 7-E, would the methodology in compiling information responsive to 7-E follow the same methodology regarding the materials as you've testified to with respect to materials requested in Paragraph 6?

A: Specifically with regard to Subparagraph 7-E I would expect -- well, again, that would most likely because of the regulatory issues involved in the search of individual locations it may have had or currently have PCB equipment. There is material in the PCB document archive that relates to 7-E so I would consult with the archive as well but in addition I believe I would probably also have to go out to the plant locations.

Q: What steps did Monsanto take to search for and locate documents sought in Paragraph 7-F as in Frank?

A: I'm not aware that we took any steps to respond to 7-F.

Q: What is the basis of your understanding that no steps were taken to search for documents responsive to 7-F?

A: Now, I'm sorry, let me amend that. I didn't see the Point Comfort facility designation on 7-F. We did look for documents quite broadly, anything that we could find in the areas that I've identified that related to the Point Comfort facility, we didn't restrict our search in any fashion. If we found something that related to Point Comfort we gathered it.

MR. CARNEY: Just for the record, we did agree to produce documents responsive to F and with regard to 8 also within the category of the documents under Subparagraph F.

Q: (By Mr. Seife) What were the results of the search efforts regarding the requests set forth in 7-F?

A: It's difficult to say. Certainly that document that was produced this morning, the

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numbers of which I don't recall offhand but --

Q: ALAC3513 through 14?

A: That's the document. It may be responsive to F. If it were signed it would certainly would be responsive to 7-F with respect to the issue of mercury. I don't know whether or not that document, in fact, was ever signed by Monsanto or Alcoa or not.

Q: What efforts were undertaken to produce -- to search for materials responsive to Request No. 8?

A: Again, as I understood what had been agreed to, 8 was limited to the topic identified in 7-F because of the way the Request No. 8 is structured, and as I said before, if we looked at it very broadly for any material that would relate to the Point Comfort facility and if we found anything that related to Point Comfort we collected it and looked at it to see if it was responsive to an item in the subpoena.

Q: Were there any materials that were located during the search efforts that you've just testified to regarding Point Comfort that were not listed on the privilege log and that were not produced?

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A: No, not to my recollection. The answer to that is no.

Q: Would the efforts to search for the responsive materials requested in Paragraph 8 representing Paragraph 7-A through E be performed in the same fashion as you've testified to, specifically the methodology in searching for materials responsive to 7-A through E?

A: It would be the same general methodology, yes.

Q: And the search could be performed simultaneously?

A: I would regard 8 as being a more restricted request than 7 and the documents that would be looked for under Paragraph 7 would subsume Request No. 8.

Q: Are the materials found with respect to Paragraph 8 found at the Monsanto corporate headquarters in its collection of the PCB documents?

A: Some of those documents may be found within the PCB archive, yes. I would say that 7 and 8 read together are much broader, obviously, than would be found in just a PCB archive.

Q: You testified -- and correct me if I'm

wrong -- that the search for materials requested in Paragraph 8 would be a narrower search than those materials requested in Paragraph 7-A through E?

A: Having to search for the materials in Paragraph 7 would, I believe, also yield the materials that would be responsive to Paragraph 8.

Q: Thank you. Directing your attention to Paragraph 10 --

(Discussion off the record.)

(A lunch break was had from the hours of 11:50 a.m. to 1:30 p.m.)

MR. SEIFE: Back on the record.

Q: (By Mr. Seife) I'll remind you the deposition protocol is before you, feel free to review those numbered paragraphs 1 through 3. Redirecting your attention to Exhibit A.

A: Yes.

Q: Exhibit A of -- Exhibit A, Page 8, Paragraph 10.

A: Yes.

Q: Would you be kind enough to review that to yourself? Continues on Page 9.

A: Yes.

Q: Have you had the opportunity to review the paragraph?

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A: I have.

Q: Have you or at your direction instructed anyone to search for materials responsive to the information sought in Paragraph 10?

A: No, I have not.

Q: Why was that such request not made?

A: On the grounds of burden and the number of places and the amount of materials potentially responsive.

Q: Solely focusing your attention on the request as it relates to PCB related materials, would the methodology, you, meaning Monsanto, would follow in searching for the materials be the same methodology to search for PCB related materials as such request set forth in Paragraph 7 with the exception of Subparagraph F, Paragraph 7-A through E, would the methodology be the same?

A: Let me make sure I understand your question because 7 by its terms refers both to mercury and PCB's to -- even when you refer to 7 you were restricting it to PCB's as well?

Q: That's correct. I'm just trying to streamline my inquiry to see if the search methodology would be the same.

A: Yes.

Q: Okay. Would there be any differences -- in other words, would there be any other areas searched to see if there are any responsive materials in Monsanto's possession regarding Paragraph 10?

A: Probably not.

Q: Okay. It would be the identical search?

A: As well as I can tell just sitting here right now, yes.

Q: Thank you. Now, focusing your attention to a portion of Paragraph 10 regarding documents addressing mercury.

A: Yes.

Q: Would the similar methodology in areas searched -- withdrawn. That's awkward. With respect to Paragraph 10, documents searched regarding mercury.

A: Yes.

Q: Would you follow the same methodology in searching for documents regarding mercury as those requests relating to mercury set forth in Paragraphs 7-A through E?

MR. STOCKMAN: I'll object to that. I'm not sure that he's made any testimony regarding mercury under Paragraph 7. I believe our earlier

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inquiry was limited to PCB's.

Q: (By Mr. Seife) You may answer the question.

A: I believe it would be the same methodology as would be followed under 7-A through E for mercury.

Q: Did you testify as to the methodology regarding documents that relate to mercury related topics set forth in Paragraph 7-A through E?

MR. CARNEY: I'm going to object to the question. I think that's an improper question to ask him to search his mind as to the questions that have been asked all morning.

MR. SEIFE: I withdraw the question. Fair objection. Testimony speaks for itself.

Q: (By Mr. Seife) Directing your attention to Paragraph 11, kindly read it to yourself.

A: Yes.

Q: Have you read that paragraph numbered 11 before today?

A: Yes.

Q: Have you instructed any searching be undertaken for any responsive materials in Monsanto's possession regarding those sought in Paragraph 11?

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A: I instructed that no search be undertaken at this time.

Q: Why did you issue such instruction?

A: On the grounds of burden of the search and volume of materials that would likely result from that search.

Q: What methodology would be followed to search for the materials that may be in Monsanto's possession responsive to the request set forth in Paragraph 11?

A: I would have to have a search conducted not only of the PCB archive but I would also have to have a search conducted of the research library as well as the medical and toxicology libraries and of the document storage center in Westport.

Q: The search of materials in Westport Center would follow the same methodology as the prior searches that you've testified to that have been performed at the Westport Center?

A: Yes, but the scope of the search would be broader than what I have conducted in response to this proceeding at this point.

Q: You used the terminology "PCB archives." Are you using that terminology -- do you still refer to the same set of PCB documents maintained

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in the corporate headquarters?

A: Yes, in the law department, that's correct.

Q: Would there be any other areas under Monsanto's control that would be searched other than the four that you've identified regarding the materials or the documents requested in Paragraph No. 11?

A: Depending upon the results of the searches that we conducted in those areas. It may be necessary for us to contact retired Monsanto scientists who may have worked on a project, the type identified in Paragraph 11, to determine whether there were other areas in the company that we needed to look into.

Q: Would you instruct your team in the same manner as you had instructed them to perform a search for the PCB archives -- of the PCB archives to search for documents that are requested in Paragraph 11 as they performed the search for documents requested in Paragraph 1 of the exhibit? And that was somewhat of an awkward question. I hope you understand.

A: I'd appreciate it if you run through it. I'm not quite sure what you meant.

Q: If Monsanto performed a search of the PCB

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documents to see if any documents are contained in those materials are responsive to Request No. 11, would the same procedures be followed as that undertaken by your team to search for documents that Monsanto has agreed to search for and has produced pursuant to the subpoena?

A: If I understand you correctly, you're saying if I were to undertake a search in response to Item No. 11 on Page 9 of the Exhibit A, confining myself to the PCB archive, would there be any different methodology employed to search that archive as for a search that I've already undertaken?

Q: Correct.

A: The answer is no, but the material that would be elicited from a search responsive to Paragraph No. 11 is likely to be much larger.

Q: You said it's likely but you have no personal information as to whether or not it would or would not have been?

A: I have a pretty good idea that it would be. I don't know precisely how many documents might be responsive. I don't think anybody could tell you that in advance of actually conducting the search. I do know that it would be a lot larger than what

we have agreed to produce thus far.

Q: What's the basis of such belief?

A: My long experience with those documents.

Q: And you used the term "actually conducting the search," the actual conducting of the search, could that search have been performed simultaneously with the search undertaken as you've testified to that led to the production of the documents that you've produced --

A: No.

Q: -- pursuant to the subpoena?

A: No, that could not be done simultaneously because it would require searching for different documents.

Q: Why would it be required to search for different documents because the search had been performed simultaneously?

A: I don't see how that would be possible.

Q: Is there an index or a catalog of materials maintained in the research library?

A: I believe so, yes.

Q: Is it computerized?

A: In part.

Q: Is it an index or a catalog or together?

A: It is a catalog of some things, an index of

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others, because there are a number of things that are contained in the research library.

Q: If one -- if a Monsanto employee went to the research library to gather information regarding mercury -- withdrawn. Is the index subject matter indexed?

A: For some things, yes, for other things, no. As you might imagine, it's the things that aren't indexed that are the most difficult to search and things like our scientist research laboratory notebooks, which is maintained in the research library, are the only catalogs that are not indexed.

Q: Those materials that are indexed are indexed by subject?

A: Most of them are, yes.

Q: Okay. If one were to go to that subject index and look under mercury, what might one find?

A: That's a good question. I don't know the the answer to that. I'm not certain that we have an index topic for mercury. We may or may not.

Q: How difficult would it be for one of your team members to go to the research library to pull the index and to look under mercury?

A: To do that one task, that would be

relatively straight forward. That would not give me assurance, however, that that would -- that that act would suffice to be a good faith search of the research library for all materials which were reasonably likely referred to mercury.

Q: But would that effort be a step in the right direction to possibly locate materials locating mercury?

A: That would be a step that I would have to take in that regard, yes, but one of many.

Q: You referred to the medical and toxicology library, is that a library or libraries? Are they one in the same?

A: There are two.

Q: One is the medical library?

A: One is a medical library that contains some articles and some epidemiology type studies that we have conducted at Monsanto.

Q: Is there an index to the materials maintained in the medical library?

A: I believe there is, yes.

Q: Is there a subject matter index?

A: I believe it's subject matter indexed, yes.

Q: And if one were to go to the medical library, look under mercury, you may find a mercury

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subject matter within the index?

A: One may, yes.

Q: And is that something that can be accomplished in a fairly short period of time?

A: That discrete action, yes.

Q: Is there a subject matter index to the toxicology library?

A: Yes.

Q: And similarly if one were to look for information regarding mercury would one look to the subject matter index to the toxicology under M for mercury?

A: That would be the first step, most likely. That would not necessarily be the only step as with the research library, the medical library.

Q: But one could do that in fairly short order in a matter of minutes even, is that correct, sir?

A: Well, again, that discrete task, yes.

Q: Going back to the Westport Center, I believe you testified that is the sum methodology and place to locate materials, is that correct?

A: Well, there is a crude method, yes, that's what I've referred to as the transmittal sheets and those are pieces of paper, 8 1/2 by 11, on which individuals who transmit records to be stored at

the Westport facility are supposed to note what it is they're storing there so that if required the material can be retrieved.

Q: How, if at all, are these transmittal sheets maintained in that? In other words, are they in chronological order, subject matter order, department order?

A: They are maintained, I believe, in two different ways. One is by department and I believe they're also maintained chronologically.

Q: Are there any subject matter order -- is there a subject matter order to these transmittal sheets?

A: No.

Q: Were these transmittal sheets reviewed for materials responsive to -- withdrawn. Are there any other libraries other than the research, medical, and toxicology libraries at Monsanto corporate headquarters? Are there departmental libraries, for example?

A: I'm not sure whether the industrial hygiene group or the epidemiology group have separate libraries. At one time the corporate engineering department had a separate library. I don't know whether that library still exists since we did away

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with engineering as a separate function. There may be other libraries that I'm not familiar with. Those are the main libraries that I use as resources for information gathering purpose.

Q: Other than the subject matter indices that you've testified to, are there any other subject matter indices maintained by yourself or any other custodian of records at Monsanto corporate headquarters?

A: I can't respond to that question the way it's phrased. I don't know what you mean by "any other subject matter indices."

Q: For example, the subject matter index found in the research, medical, and toxicology libraries, are there any other indexes, listing of any materials by subject matter?

A: Not that I'm aware of.

MR. CARNEY: Are you talking about Monsanto indexes, I take it?

Q: (By Mr. Seife) Any materials maintained by Monsanto. I'm not talking about an index to an encyclopedia, for example, or to a medical -- one volume medical journal or technical report or reference book. I'm referring to a collection of materials.

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A: If I understand you correctly, you're asking is there some index of documents or materials that's of Monsanto maintained documents or materials that someone at Monsanto keeps other than what I've already identified for you?

Q: That's correct.

A: I don't know of any but that's certainly not to say that there aren't.

Q: Do you know who would know the answer to that question?

A: I have no idea. There is one other that I didn't mention specifically and that's the index to the vault.

Q: Any other indices?

A: Again, not that I'm aware of.

Q: How is the index to the vault organized?

A: It is a computer supported data base that has several fields of information which can be searched.

Q: Can the materials in the vault be searched by subject matter?

A: Yes.

Q: So if one were to want to search mercury, the vault materials can be searched for mercury?

A: Probably not.

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Q: Why do you say that, sir?

A: I doubt that mercury is a discrete topic that would have been entered as a bit of information captured.

Q: Do you know that for a fact?

A: No, I don't know that for a fact.

Q: Who would know the information that can be captured on subject matter searches?

A: Ms. Niblock probably would have that.

Q: Do you know -- do you personally know whether PCB is a searchable subject matter?

A: Of vault documents?

Q: Yes. Thank you.

A: No, it is not.

Q: You know that for a fact?

A: Yes.

Q: How about Pydraul, Pyranol, are those searchable subject matters for the vault materials?

A: Pyranol almost certainly is not. Pydraul may be since Pydraul was a Monsanto trait name.

Q: Are there any other PCB containing -- withdrawn. Direct your attention to Paragraph 12.

A: Yes.

Q: Have you had the opportunity to review that paragraph?

A: Yes.

Q: Have you reviewed it before today?

A: Yes, I have.

Q: Have you provided any instructions one way or another to search or not to search for materials requested in Paragraph 12?

A: I instructed my staff not to search for those materials.

Q: Why was that instruction given?

A: The volume of materials and the number of places that would have had to be consulted to obtain this information. In fact, much of what is sought here is publically available information.

Q: I was almost tempted to move to strike that as being non-responsive but I'll refrain from doing so. Can such materials be searched in the research library by the subject matter index?

A: A search could be conducted, but once again, as I commented earlier it would not be one which would constitute, in my view, a good faith search to determine all the reasonably available information on that topic that may be in the library.

Q: But it would be a starting point and it very well could be responsive material found as a

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result of that fairly simple search, is that correct?

MR. CARNEY: Objection to the form as compound.

A: I would believe that material could be found responsive to a request framed in that fashion, some material.

Q: (By Mr. Seife) A similar search could be performed at the medical and toxicology libraries at Monsanto?

A: The question could be asked whether one would obtain any responsive information, phrased in that fashion, that is questionable.

Q: Questionable meaning you don't know the results of the search if it was to be performed?

A: Whether you would obtain any information by asking a question looking under M for mercury and what's there, I don't know whether that topic in particular is one that is indexed in those libraries.

Q: But it is correct to assume that such effort can be accomplished with fairly reasonable short order and with little effort?

A: That discrete task, yes, but whether it would provide any information is unknown.

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Q: Thank you. Can a similar search be performed on the computer regarding Paragraph 12 for the materials maintained in the vault?

A: Not for these two topics, for the two substances listed in Paragraph 12.

Q: Any materials responsive to Request No. 12 may be found in the PCB documents?

A: Well, as they relate to PCB's there would be some information, yes.

Q: And the same methodology as you previously testified to for performing searches of the PCB documents would be performed here as well, is that correct?

A: The methodology would be the same but as with other searches that we've talked about the volume of material that would be elicited in such a search would be enormous because, by definition, you just get a lot of documents there from the PCB archive, it would be enormous.

Q: The search for such materials can be performed without the actual manual pulling and reviewing of documents, is that correct?

A: It depends on what you mean by search.

Q: Well, the identification of possible locations where materials may be found.

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A: That could be performed simply by querying the computer but that wouldn't do much for you.

Q: Has any third parties ever been allowed to go to the repository or the location where the PCB materials are housed to review those materials on-site?

A: Not that I'm aware of.

Q: Has Monsanto ever allowed non-Monsanto entities or employees to review Monsanto documents on the Monsanto corporate headquarters facility for purposes of production of documents in the litigation?

MR. CARNEY: Object to the form of the question. It's vague.

A: Any documents any time for any case? Is that your question?

Q: (By Mr. Seife) Well, start with the matters that you've provided custodian of records deposition testimony and that would include the Monsanto versus Aetna litigation in Delaware.

A: Well, I'm -- let me just clear one thing up. The deposition testimony I provided in Monsanto versus Aetna was not as custodian of records.

Q: That's why I added Monsanto in addition to.

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A: Now, in the Monsanto versus Aetna litigation, lawyers representing Monsanto's insurance carriers did review documents on campus for purposes of the document production that was required in that case. They did not review the PCB archive, though, to my recollection. I couldn't catalog for you the places where they did look.

Q: I'm sorry, you could or could not?

A: Could not.

Q: Were any searches performed in response to the subpoena regarding documents addressing communications between Monsanto and General Electric?

A: No, not specifically in those terms.

Q: I direct your attention to Paragraph 13-B; all documents that relate to communication between Monsanto and General Electric regarding the Point Comfort facility.

A: Well, you asked me did we look for documents relating to correspondence between Monsanto and GE, we did not look for those documents in that fashion. We looked for documents relating to Point Comfort and if any constituted communications between Monsanto and GE we would have produced them.

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Q: They were two separate questions, you were absolutely correct. My first question was just that with respect to communications between Monsanto and General Electric and I understood your testimony to be no, is that correct?

A: We did not look for that -- strike that. We didn't look for documents by using that search logic, that's correct.

(Discussion off the record.)

MR. SEIFE: Back on the record.

Q: (By Mr. Seife) You've testified to many areas at Monsanto corporate headquarters and searches were performed in many areas that house documents as well as several subject matter indices. Are any -- do any of these areas have subject matter indices where corporate entities -- a entity can be searched? For example, in the research library can you search for materials regarding General Electric or Alcoa?

A: I don't know the answer to that.

Q: Do you know who would know the answer to that?

A: The research librarian.

Q: Are there any indices that you're aware maintained by Monsanto wherein you can search by

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corporate entity such as General Electric or Alcoa?

A: I can search the PCB archive for that parameter.

Q: Was the PCB archive search performed for the parameter of General Electric and Alcoa?

A: No.

Q: Why?

A: Because of the volume of the materials that would be elicited by that search.

Q: Now, would this be materials that have both General Electric and Alcoa's name on it or would it have a separate collection of the General Electric documents and a separate collection of Alcoa documents?

A: It would depend on how you asked the question.

Q: So a Westlaw, Lexis type search can be performed in a data base requesting all documents with General Electric and Alcoa's names, is that correct?

MR. CARNEY: I'll object to that question. I think you're getting into attorney work product, the information as to the specifics of how the searches are done in the archive.

THE WITNESS: I agree with that.

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Q: (By Mr. Seife) In all due respect, if you could answer the question unless your attorney instructs you not to answer.

MR. CARNEY: I'm going to instruct him not to answer that.

Q: (By Mr. Seife) Can one search the -- is there a methodology by which one can search the PCB documents for documents containing the name Alcoa?

MR. CARNEY: Same instruction, same objection and same instruction.

MR. SEIFE: If you can just read back the question, please.

(The requested portion of the record read by the reporter.)

Q: (By Mr. Seife) Same question with respect to the entities Leonard Construction, Denora, Alcoa -- well, Alcoa and Enviro-Chem.

MR. CARNEY: You're talking about the PCB archive?

MR. SEIFE: The PCB documents.

MR. CARNEY: Same instruction, same objection.

Q: (By Mr. Seife) Same question with respect to Point Comfort, the Point Comfort facility, the term Messina facility, the term Vancouver facility.

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MR. CARNEY: Same objection, same instruction.

Q: (By Mr. Seife) Were any searches performed for materials responsive to the request contained in Paragraphs 3-E and 3-F, Page 9 -- I'm sorry, 13-E and 13-F, Page 9 of Exhibit A to Exhibit A?

A: No.

Q: Why were such searches not performed?

A: Because of the volume of the materials that would be entailed there, literally hundreds of thousands of pages of documents.

Q: What's the basis of your statement regarding the volume of materials being responsive?

A: My long experience with these documents.

Q: And specifically the documents regarding Monsanto's sale to General Electric or Monsanto PCB containing products?

A: That's correct.

Q: You believe there to be, without being argumentative, in all due respect 100,000 or more documents of that subject matter contained in the PCB documents?

A: I believe I said pages of documents but the answer is yes.

Q: That didn't by no means meant to

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mischaracterize your testimony. Thank you for the clarification. We have now covered every subject matter area set forth in the subpoena. In your search for materials responsive to requests in the subpoena, were any limitations placed on the search as far as time period?

A: Not that I recall. By any I assume you mean date range of the documents?

Q: Yes.

A: Not the amount of time that could be spent?

Q: That's correct.

A: The answer is no.

Q: In the subpoena the time period has been defined as, I believe, as 1945 to the present.

A: To the present.

Q: Switching gears to another subject matter; document retention or document destruction practices. Does Monsanto have a document retention or document destruction practice regarding the areas that were searched for responsive documents? And I know very well that may need to be broken down. Does it need to be broken down?

A: For purposes of the answer to that question, no, the answer is yes, we do have a document retention policy with respect to all areas

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that were searched.

Q: And is there one such practice or policy?

A: We have a policy which has many different facets depending upon the area and type of document involved.

Q: Regarding the document destruction practice, is there a document destruction practice in place for the same collection of materials?

A: There are some materials that were searched for which there is no destruction data. By that I mean they are not to be destroyed.

Q: Was there any indication during any of your searches or team searches for materials responsive to the subpoena where it was determined that documents were in fact destroyed?

A: Yes, we had an indication that some vault documents had been destroyed in the usual course of business.

Q: Vault documents that would have been responsive to the request set forth in the subpoena?

A: That's correct.

Q: Do you know when those materials were last destroyed?

A: I believe they were destroyed in 1991.

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Q: Subsequent to that time were any responsive documents destroyed?

A: Not that I'm aware of.

Q: I want to break down for a moment any materials regarding Leonard Construction or Leonard Construction files. During your investigation of or search for materials responsive to the subpoena was any information revealed that any Leonard Construction specific materials were destroyed?

A: And I can't answer that directly because since the material was destroyed I really couldn't see what it all may have related to. The specific items that I'm referring to are contracts between Monsanto and Alcoa that related to the Point Comfort facility that were maintained in the vault and which our records indicate were destroyed on a regular course in 1991. That may have contained some reference to Leonard because of Leonard's role in the construction of that facility.

Q: Are you able to identify any other types of documents that were destroyed other than the contracts between Monsanto and Alcoa?

A: Those are the only documents that I'm aware of that I can identify as having been destroyed.

MR. SEIFE: Let's take a couple minutes

break. I want to check my thoughts and see what if any additional examination I have of the witness.

MR. CARNEY: Okay.

(Recess.)

MR. SEIFE: Back on the record. Does Monsanto maintain any chlorine institute related materials in its possession?

A: Yes.

Q: Where would those materials be found?

A: I'm not sure I know all of the places but one place would be in the environmental policies staff.

Q: Is the environmental staff a separate staff -- this is the first time you're referring to them in your deposition testimony -- or do they relate to environmental departments, specifically the environmental operations in the chemical company, the environmental law group, the environmental --

A: Environmental affairs group.

Q: Where else, if anywhere else, might there be chlorine institute materials?

A: There might be some in the law department.

Q: Anywhere else?

A: Not that I can think of offhand.

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Q: Were any of those areas searched for responsive documents in chlorine institute materials in the environmental policy staff area and in your department?

A: No, because none of those would have anything to do with the topics that were addressed in the subpoena.

Q: Were any searches performed for any Monsanto Denora partnerships?

A: Yes, we looked generally for Denora related material.

Q: And the results of such searches?

A: Well, if we found any we produced it. I don't recall seeing any when I looked through the documents.

Q: Are all the engineering -- withdrawn. Are any engineering and operational manuals maintained by the Enviro-Chem Systems group?

A: Engineering or operational manuals?

Q: Correct.

A: I would imagine so, yes, I don't specifically know.

Q: I may have asked you this but where is the Enviro-Chem Systems group or subsidiary located?

A: I believe their headquarters is in

Chesterfield, Missouri, which is in St. Louis County not far from Monsanto's world headquarters.

Q: Were any of their files searched for responsive documents?

A: Yes.

Q: I believe you testified to that.

A: Yes.

Q: Does Leonard Construction and Enviro-Chem have any corporate relationship?

A: Other than just being both wholly owned subsidiaries of Monsanto, no.

MR. SEIFE: I have no further questions at this time. However, I do reserve my client's right to continue this deposition as dependent upon the discussions between counsel in attempts to resolve the other areas contained in the subpoena which the witness has testified were not searched for and I specifically referred to my office letter of February 10th, 1995 to Mr. Merrill, counsel for Monsanto, specifically Paragraphs 4 and 5 and at this time request Monsanto's counsel -- we can go off the regard and renew our discussions to confer in an attempt to determine if any additional productions will be forthcoming and as agreed to in Mr. Merrill's January 24th letter and Ms. McNeill's

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February 10th, 1995 letter, so I'm readily available today and tomorrow to pursue those discussions.

MR. CARNEY: Why don't we finish the deposition and I'll respond.

MR. SEIFE: By all means.

MR. CARNEY: Off the record, if that's okay, unless you want it on the record.

MR. SEIFE: Okay.

EXAMINATION

QUESTIONS BY MR. STOCKMAN:

Q: Okay. I only have a couple questions, Mr. Bistline. If you could just look at Item 6 on the subpoena which is Exhibit A which requests, among other things, documents that relate to PCB handling and use. That request, in effect, would encompass potentially every document in what we referred to as the PCB archives, wouldn't it?

A: I don't know about every one but certainly a large percentage of them, that's true.

Q: And you estimated that there was around a million pages, give or take, in that archive?

A: That's correct.

Q: And that there would probably be additional documents at other locations in Monsanto's system

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that might also refer to these documents -- that might also contain these documents?

A: That's correct.

MR. SEIFE: Objection to the extent it mischaracterizes the witness's testimony.

Q: (By Mr. Stockman) So if the subpoena were enforced strictly in its entirety Monsanto's production would exceed a million pages?

A: I really can't say that. It would be a very large number of pages, in the hundreds or thousands certainly.

MR. STOCKMAN: Thank you. I have no further questions.

MR. SEIFE: I have no questions.

THE WITNESS: I want to sign.

(Deposition adjourned.)

SIGNATURE NOT WAIVED, BY AGREEMENT OF COUNSEL AND WITNESS.

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COMES NOW THE WITNESS, THOMAS M. BISTLINE, and having read the foregoing transcript of the deposition taken on the 23rd day of February, 1995, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

Thomas M. Bistline

THOMAS M. BISTLINE

Subscribed and sworn to before me this 23rd day of March, 1995.

My Commission expires: CAROL LEE
Notary Public — Notary Seal
STATE OF MISSOURI
JEFFERSON COUNTY
My Commission Expires: February 23, 1997

Carol Lee

Notary Public

WATER_PCB-SD0000066637

STATE OF MISSOURI

SS.

CITY OF ST. LOUIS

I, REBECCA BRUNER, a Notary Public in and for the State of Missouri, duly commissioned, qualified and authorized to administer oaths and to certify to depositions, do hereby certify that pursuant to agreement in the civil cause now pending and undetermined in the Circuit Court of the COUNTY District of ST. LOUIS, State of Missouri, to be used in trial of said cause in said court, I was attended at the offices of Thompson & Mitchell, One Mercantile Center, in the City of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 23rd day of February, 1995.

The said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing transcript, said testimony being by me reported in shorthand and caused to be transcribed into typewriting, and that the foregoing pages correctly set forth the testimony of the

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aforementioned witness, together with the questions propounded by counsel and remarks and objections of counsel thereto, and is in all respects a full, true, correct and complete transcript of the questions propounded to and the answers given by said witness; that signature of the deponent was not waived by agreement of counsel.

I further certify that I am not of counsel or attorney for either of the parties to said suit, not related to nor interested in any of the parties or their attorneys.

COURT MEMO

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS

STATE OF MISSOURI

ALUMINUM COMPANY OF AMERICA, et al.

VS. CAUSE NO. M3223

ACCIDENT & CASUALTY INSURANCE CO., et al.

CERTIFICATE OF OFFICER AND

STATEMENT OF DEPOSITION CHARGES

(Rule 57.03 (g) (2) (a) & Sec. 492.590 RSMO 1985)

DEPOSITION OF THOMAS M. BISTLINE

TAKEN OF BEHALF OF THE DEFENDANTS

FEBRUARY 23, 1995

Name and address of person or firm having custody of the original transcript:

Mr. Darrel M. Seife

O'Melveny & Myers

153 East 53rd Street

New York City, New York, 10022-4611

TAXED IN FAVOR OF:

O'Melveny & Myers

153 East 53rd Street

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New York City, New York, 10022-4611

121 pages of original & copy @ 3.00 $363.00

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TAXED IN FAVOR OF:

Mr. Paul K. Stockman

Kirkpatrick & Lockhart

1500 Oliver Building

Pittsburgh, Pennsylvania, 15222-5379

121 pages of copy @ 1.10 $133.10

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TAXED IN FAVOR OF:

Mr. Thomas M. Carney

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100 N. Broadway, Suite 1300

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charges had not yet been paid. It is anticipated that all charges will be paid in the normal course of business.

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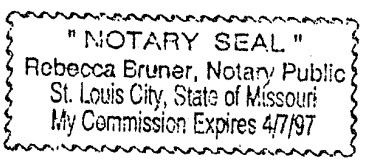
IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 6th of March 1995.

My commission expires April 7, 1997.



Notary Public



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Page 11 Line 9 Should read: "substantive matters"

Reason for assigned change: transcription error.

Page 18 Line 11 Should read: Delete the word "all"

Reason for assigned change: transcription error

Page 24 Line 21 Should read: "We have the Chocolate Bayou plant, which we still operate; then there is the Texas City

Reason for assigned change: transcription error Plant, which Monsanto owned up until 1985, I believe."

Page 25 Line 9 Should read: "NPDES"

Reason for assigned change: transcription error

Page 28 Line 19 Should read: Delete the word "not"

Reason for assigned change: transcription error

Page 33 Line 20 Should read: "PCB documents"

Reason for assigned change: word omitted

Page 35 Line 13 Should read: NPDES

Reason for assigned change:

Page 40 Line 2 Should read: Delete the word "of"

Reason for assigned change:

Page 40 Line 24 Should read: Delete the word "no" before "greater"

Reason for assigned change:

Page 41 Line 5 Should read: Change "in one" to "of one"

Reason for assigned change:

Page 41 Line 6 Should read: "Chemicals Group"

Reason for assigned change:

Thomas M. Bistline

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Page 41 Line 6-7 Should read: "It was in a forms file"

Reason for assigned change:

Page 42 Line 4 Should read: "privileged"

Reason for assigned change:

Page 48 Line 14 Should read: "for environmental affairs."

Reason for assigned change:

Page 49 Line 24 Should read: NPDES

Reason for assigned change:

Page 55 Line 1 Should read: Delete the word "that"

Reason for assigned change:

Page 62 Line 2 Should read: "enumerates"

Reason for assigned change:

Page 83 Line 20 Should read: change "it" to "that"

Reason for assigned change:

Page 95 Line 12 Should read: "library, are not indexed."

Reason for assigned change:

Page 101 Line 20 Should read: "trade name"

Reason for assigned change:

Page 112 Line 10 Should read: "date"

Reason for assigned change:

Page 114 Line 11 Should read: "Policy"

Reason for assigned change:

Thomas M. Bistline

WATER_PCB-SD0000066644

STATE OF MISSOURI
COUNTY OF ST. LOUIS SS.

SUBPOENA DUCES TECUM
On Deposition

The State of Missouri, to Custodian of Records, Monsanto Company, 800 N. Lindbergh, St. Louis, Missouri 63167

GREETING:

You are hereby Commanded, That setting aside all manner of excuse and delay, you be and appear in the office of Thompson & Mitchell whose address is One Mercantile Center, Suite 3400, St. Louis, Missouri 63101 on the 30th day of January 19 95, at 10:00 o'clock A.M. then and there to testify, and the truth to speak, in a certain cause pending in our said Court wherein Aluminum Company of America plaintiff, and Accident & Casualty Insurance Co. defendant, on the part of said defendant, and you are futher commanded to bring with you, and then and there produce in evidence See attached Exhibit A

and this you shall in no wise omit. The person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

WITNESS, Gene Overall, Clerk of Circuit Court with the seal thereof hereto affixed, at the office in the County of St. Louis, this 12 day of January 19, 95.

SEAL OF THE CIRCUIT COURT OF ST. LOUIS COUNTY MISSOURI

Gene Overall

Circuit Clerk

DEFENDANT'S
BIST LINE
EXHIBIT NO. A
FOR IDENTIFICATION
2-23-95
DATE: RPTR: DO

WATER_PCB-SD0000066645

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ALUMINUM COMPANY OF AMERICA et al.,	
Plaintiffs,	
v.	Cause No. M-32223
ACCIDENT & CASUALTY INSURANCE CO., et al.,	Division No. 15
Defendants.	

ORDER

Petitioners' Application for Ex Parte Issuance of A Subpoena for Taking of A Deposition to Be Used in a Foreign Jurisdiction is GRANTED. Pursuant to Rule 57.09, the Circuit Clerk is hereby ordered to issue a Subpoena.

SO ORDERED:

_____

DATED: 1/12/95

_____

WATER_PCB-SD0000066646

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ALUMINUM COMPANY OF AMERICA, et al.,	)	
Plaintiffs,	)	Cause No. M- 3223
v.	)	Division No. 15
ACCIDENT & CASUALTY INSURANCE CO., et al.,	)	
Defendants.	)	

APPLICATION FOR EX PARTE ISSUANCE OF
A SUBPOENA FOR TAKING OF A DEPOSITION
TO BE USED IN A FOREIGN JURISDICTION

COME NOW Petitioners, Insurance Company of North America, CIGNA Specialty Insurance Company (formerly known as California Union Insurance Company), Cravens Dargan Co., Pacific Coast as managing general agent for Central National Insurance Company of Omaha and St. Paul Mercury Insurance Company (in its capacity as a member company of AFIA (an insurance association)), and, pursuant to Rule 57.08 of the Missouri Supreme Court Rules, move this Court to enter its Order directing issuance of a subpoena duces tecum as provided in Rule 57.09(b) of the Missouri Supreme Court Rules.

1. Petitioners are defendants in a case currently pending in the Superior Court of the State of Washington for the County of King styled Aluminum Company of America, et al. v. Accident & Casualty Ins. Co., et al., No. 92-2-28065-5 (Wash.Super. King C'ty).

WATER_PCB-SD0000066647

2. A Commission has duly issued out of the Superior Court of the State of Washington for the County of King for a subpoena duces tecum to take the deposition of the custodian of records of Monsanto Company in relation to the issues arising in the Action. The documents requested are listed in the attached Exhibit A. The Order and original Commission issued out of the Superior Court of the State of Washington for the County of King are attached as Exhibit B.

3. In this case, plaintiffs Aluminum Company of America and Northwest Alloys, Inc. (collectively, "ALCOA") seek to obtain insurance coverage for over $1 billion in alleged environmental liabilities from over 68 insurers under 112 first-party property policies and 222 third-party liability policies over a 30-year period.

4. On information and belief, the custodian of records of Monsanto Company is located at 800 N. Lindburgh Boulevard, St. Louis, Missouri 63167-0002. This address is within this Court's jurisdiction.

5. On information and belief, pursuant to a review of records produced in the underlying action, including records produced by ALCOA, Monsanto Company was involved in manufacturing and/or supplying ALCOA with products containing PCB's. ALCOA's use of such products are at issue in the insurance coverage action. Monsanto Company was also involved in the construction and/or operation of a chlor-alkali plant at one of ALCOA's facilities. The operation of the chlor-alkali plant is at issue in the insurance coverage action.

WATER_PCB-SD0000066648

6. Thompson & Mitchell is acting as local counsel for the Petitioners in connection with securing the subpoena duces tecum here at issue.

7. No previous application has been made in this action for the relief sought.

WHEREFORE, pursuant to Rule 57.08 of the Missouri Supreme Court Rules, Petitioners move this Court to enter its Order directing issuance of a subpoena duces tecum as provided in Rule 57.09(b) of the Missouri Supreme Court Rules and for such other relief as this Court deems just and proper.

Respectfully submitted,

THOMPSON & MITCHELL

By _____

Bradley A. Winters, #29867
Roger A. Keller, Jr., #42541
One Mercantile Center
Suite 3300
St. Louis, Missouri 63101
(314) 231-7676

Attorneys for Petitioners

WATER_PCB-SD0000066649

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

1. In responding to this subpoena, you are instructed to produce all documents which are in your possession, custody or control.

2. Wherever appropriate, the singular includes the plural and vice-versa, the conjunctive includes the disjunctive and vice-versa, the present tense includes the past tense and vice-versa, and the pronouns of any particular gender shall be deemed to apply to all genders.

3. For purposes of this subpoena, the following terms have the meanings set forth below:

A. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

B. The term "document" includes, without limitation, photographs and writings of any kind, including all originals and all copies not identical to the original or to each other, all drafts, all amendments, all notes and memoranda, and in addition to writings of any kind, any tapes, discs, microfilm, microfiche, or other forms of photographically, electronically or magnetically recorded or stored information or documents. In all instances, documents produced are to be unexpurgated, and copies of documents which have notes or markings on them are not to be considered identical to other copies of the same document which do not have the same notes or markings.

C. Documents "relating to" or which "relate to" any given matter mean documents which constitute, contain, discuss, embody, comment upon, identify, refer to, concern or are otherwise pertinent to that matter.

D. "ALCOA" refers to the Aluminum Company of America, its officers, directors, employees, parent company, subsidiaries and affiliated companies.

E. The "Point Comfort Facility" refers to the manufacturing and production facility operated and maintained by ALCOA in Calhoun County, Texas.

F. The "Massena Facility" refers to the manufacturing and production facility operated and maintained by ALCOA in Massena, St. Lawrence County, New York.

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G. The "Vancouver Facility" refers to the manufacturing and production facility formerly operated by ALCOA adjacent to the Columbia River in Vancouver, Washington.

H. "Monsanto" refers to the Monsanto Company, its officers, directors, employees, agents or independent contractors, parent company, subsidiaries and affiliated companies, including, without limitation, Leonard Construction and Monsanto Enviro-Chem Systems, Inc.

I. "DeNora" refers to the DeNora Company, its officers, directors, employees, parent company, subsidiaries and affiliated companies.

J. "General Electric" refers to the General Electric Corporation, its officers, directors, employees, parent company, subsidiaries and affiliated companies.

K. "PCB" refers to polychlorinated biphenyl and/or any other chemical compounds that are commonly referred to in scientific literature or by Monsanto as PCB's.

4. If any information, communication or document is withheld under a claim of evidentiary privilege, you shall, on or before the return date of this subpoena, identify for each such item of information, communication or document the person(s) with knowledge of the information withheld, the parties to any communication withheld, the author(s) and recipient (s)of any document withheld, each person to whom a copy (copies) of any such document was (were) furnished, the date(s) and subject matter of any information, communication or document as to which a privilege is claimed, and the nature of the privilege claimed as well as the basis of such claim.

5. Unless specifically stated otherwise, this subpoena requires production of all documents dated, prepared, received or sent during the time period January 1, 1945 through the present which are within the possession, custody or control of Monsanto.

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DOCUMENTS REQUESTED

1. Documents that relate to products manufactured, sold, leased or supplied, and services performed or to be performed by Monsanto for or on behalf of ALCOA or ALCOA's agents with respect to the Point Comfort Facility, including, but not limited to:

a. Proposals and drafts of proposals regarding the construction, start-up, plant expansions and operations of ALCOA's Point Comfort chlor-alkali plant and any associated waste treatment, storage or disposal facility, lagoons or landfills;

b. Process diagrams, process instruction manuals, training manuals, procedures manuals, methods manuals, safety manuals and all other manuals used for operations or instruction which were produced for or conveyed to ALCOA in connection with the Point Comfort Facility;

c. Proposals and drafts of proposals regarding the purchase of equipment, parts, raw materials and in-process mercury regarding ALCOA's Point Comfort chlor-alkali Plant and any associated waste treatment, storage or disposal facility, lagoons or landfills;

d. Preliminary cost estimates for any services to be performed or products manufactured, sold or supplied for

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or in conjunction with ALCOA regarding the Point Comfort Facility;

e. The preliminary and final designs of the chlor-alkali plant for the Point Comfort Facility and any associated waste treatment, storage or disposal facility, lagoons or landfills;

f. All documents related to any on-site work performed by Monsanto at the Point Comfort Facility;

g. All invoices submitted by Monsanto for services performed or equipment, parts, raw materials or products sold, leased or provided to or purchased from ALCOA regarding the Point Comfort Facility;

h. All purchase orders and invoices regarding Monsanto's sale of PCB's, Pydraul, Pyranol and all other PCB containing fluids for use at the Point Comfort Facility;

i. Any contracts as to which Monsanto is a party regarding the Point Comfort Facility;

j. Any contracts between Monsanto and DeNora regarding the Point Comfort Facility;

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k. Any contracts between Monsanto and any person, corporation or entity regarding the Point Comfort Facility;

l. All meetings and communications between Monsanto, DeNora and/or ALCOA, including to but not limited to those that may have been held in Pittsburgh, Pennsylvania, Point Comfort, Texas, or at Monsanto, regarding the Point Comfort Facility;

m. Monsanto's ownership interest in the Point Comfort Facility chlor-alkali plant and related facilities, and related spare parts inventories, raw materials, in-process mercury, tanks, and rail loading facility;

n. Dredging operations performed in Lavaca Bay adjacent to the Point Comfort Facility;

o. Any contracts between Monsanto and Texas Brine for services rendered at the Point Comfort Facility;

p. Containment of contaminated spoils at or near or arising from the chlor-alkali plant at the Point Comfort Facility;

q. Any proposed treatment of mercury-containing effluent and/or wastewater at the Point Comfort Facility;

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r. Discharges of chlor-alkali wastes from the Point Comfort Facility directly or indirectly into Lavaca Bay;

s. Construction, operation, maintenance or repair of onshore or offshore lagoons at the Point Comfort Facility; and

t. Storage of chlor-alkali wastes in any location at the Point Comfort Facility, including, but not limited to, the onshore lagoon, the offshore lagoon, evaporation lake, and Bauxide Residue Lakes 1, 2, 3 and 4.

2. Documents that relate to mercury hazards, mercury pollution, mercury toxicity, mercury loss prevention, methylation of mercury through natural or manmade processes or the use of mercury in the chlorine industry.

3. Documents that relate to services performed or to be performed by Leonard Construction for or on behalf of ALCOA or ALCOA's agents with respect to the Point Comfort Facility.

4. Documents that relate to services performed or to be performed or products sold or supplied to the Massena Facility by Monsanto, including but not limited to the sale, delivery or handling of PCB's, or any PCB-containing fluid. This request includes, but is not limited to PCB-containing lubricants, coolants and dielectrics.

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5. Documents that relate to services performed or to be performed or products sold or supplied to the Vancouver Facility by Monsanto, including but not limited to the sale, delivery or handling of PCB's, or any PCB-containing fluid. This request includes, but is not limited to PCB-containing lubricants, coolants and dielectrics.

6. Documents that relate to PCB handling, worker safety, use, hazards, toxicity and/or environmental contamination associated with the use of PCB's or any PCB-containing fluid. This request is intended to specifically include, but is not limited to, documents generated in connection with any research and development on the above subjects, whether conducted solely by Monsanto personnel or jointly, in combination with any other entities.

7. Documents that relate to the following topics:

   a. actual or potential environmental contamination related to mercury or PCB's;

   b. abatement, control or prevention of environmental pollution related to mercury or PCB's;

   c. abatement, control or prevention of surface water contamination, soil contamination and/or groundwater contamination related to mercury or PCB's;

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d. governmental directives and regulations regarding the use, handling, transportation or disposal of mercury or PCB's;

e. precautionary and/or educational information regarding the use, handling, transportation or disposal of mercury or PCB's; and

f. discussions, negotiations or agreements with regard to cost of or payment for remediation, clean-up, indemnification or damages for contamination of bay water, surface water, soil or groundwater by mercury or PCB's from the Point Comfort Facility.

8. All minutes, agendas, notes, communications or other documents relating to any meetings attended by any employee of Monsanto from 1945 to the present at which any of the subjects referred to in Request No. 7 above were discussed.

9. All minutes, agendas, notes, communications or other documents relating to any meetings attended by any employee of Monsanto from 1945 to the present related to Monsanto's potential or actual ownership interest in the Point Comfort Facility chlor-alkali plant.

10. All documents that relate to any research conducted by or on behalf of Monsanto regarding the toxicity levels of mercury or

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PCB's and the effects of mercury or PCB's on the environment or human health.

11. All documents that relate to any research conducted by or on behalf of Monsanto regarding the development of non-PCB containing dielectric and/or hydraulic fluids in response to concerns regarding PCB toxicity or regarding the effects of PCB's on the environment or human health.

12. All documents that relate to any periodicals, journals, magazines, newsletters or other publications which relate in any manner to environmental contamination related to mercury and/or PCB's.

13. All documents that relate to communications between Monsanto and General Electric regarding:

a. ALCOA;

b. the Point Comfort Facility;

c. the Massena Facility;

d. the Vancouver Facility;

e. PCB use, PCB hazards, PCB toxicity or PCB pollution;

f. Monsanto's sale to General Electric of Monsanto PCB-containing products;

g. sale of Pydraul, Pyranol or PCB-containing fluid to ALCOA; and/or

h. ALCOA's use, handling or disposal of Pydraul, Pyranol, any dielectric or hydraulic fluid containing PCB's,

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and/or any lubricating fluid containing or thought to contain PCB's.

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THE HONORABLE J. KATHLEEN LEARNED
CIVIL TRACK I

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

ALUMINUM COMPANY OF AMERICA and NORTHWEST ALLOYS, INC., Plaintiffs, v. ACCIDENT & CASUALTY INSURANCE COMPANY, et al., Defendants.	NO. 92-2-28065-5 COMMISSION TO TAKE OUT-OF-STATE DEPOSITION WITH PRODUCTION OF DOCUMENTS

TO: Clerk of the Supreme Court for St. Louis County in the State of Missouri

FROM: King County Superior Court Clerk, Seattle, Washington

Application has been made for the issuance of a commission out of the above-entitled court to take the records deposition of Monsanto Company with concurrent production of documents. Said deposition and documents are to be used in evidence on behalf of the undersigned defendants in the above-captioned matter in the case now pending in the Superior Court of the State of Washington for the County of King, and it appears that the personal attendance of said witness cannot be procured in King County at this time.

You are hereby requested to issue the enclosed Deposition Subpoena Duces Tecum requiring the Records Custodian of Monsanto Company, 800 N. Lindburgh Boulevard, St. Louis, Missouri 63167-0002, to appear and produce documents on January 30, 1995, at 9:00 a.m. at the offices of Thompson & Mitchell, One Mercantile Center, Suite 3300, St. Louis, Missouri 63101, for the purpose of having their deposition

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taken by attorneys for the defendants in the above-captioned matter, the deposition to continue day-to-day until completed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Superior Court at my office in King County, State of Washington, on this JAN - 6 1995 day of January, 1995.

JACK RICHEY

HONORABLE ~~J.~~ KATHLEEN ~~LEARNED~~

Presented by:

O'MELVENY & MYERS

By: Susan M. McNeill

Darrel M. Seife, Esq.
Admitted Pro Hac Vice
Susan M. McNeill, Esq.
Admitted Pro Hac Vice
153 East 53rd Street
New York, New York 10022
(212) 326-2000

and

AIKEN ST. LOUIS & SILJEG, P.S.

By:

Steven Soha, Esq. (WSBA No. 09415)
1215 Norton Building
801 Second Avenue
Seattle, WA 98014
(206) 624-2650

Attorneys for Defendants Insurance Company of North America, CIGNA Specialty Insurance Company (formerly known as California Union Insurance Company), Cravens Dargan Co., Pacific Coast as managing general agent for Central National Insurance Company of Omaha and St. Paul Mercury Insurance Company (in its capacity as a member company of AFIA (an insurance association)).

M. Janice Michels, Clerk of the Superior Court
For King County, WA

By _____ Deputy

WATER_PCB-SD0000066661

THE HONORABLE J. KATHLEEN LEARNED
CIVIL TRACK I

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

ALUMINUM COMPANY OF AMERICA and NORTHWEST ALLOYS, INC., Plaintiffs, v. ACCIDENT & CASUALTY INSURANCE COMPANY, et al., Defendants.	NO. 92-2-28065-5 ORDER DIRECTING ISSUANCE OF A COMMISSION TO TAKE OUT-OF-STATE DEPOSITION WITH PRODUCTION OF DOCUMENTS

THIS MATTER having come on before the undersigned upon motion of the presenting defendants listed below in the above-captioned matter for an Order Directing Issuance of A Commission To Take An Out-Of-State Deposition With Production of Documents, and it appearing that a witness residing outside the State of Washington has knowledge of facts and possession of documents relevant to the subject matter of this case and that personal attendance of said witness cannot be procured in King County, now, therefore, it is hereby

ORDERED that a commission to take the deposition of the Records Custodian of Monsanto Company, 800 N. Lindburgh Boulevard, St. Louis, Missouri 63167-0002, shall be issued by the court clerk upon the signing of this order, and that this Commission shall request that the appropriate judicial authorities issue a subpoena duces tecum compelling the attendance of the Records Custodian of Monsanto Company at the following location: Thompson & Mitchell, One Mercantile Center, Suite 3300, St. Louis, Missouri 63101, commencing on January 30, 1995 at 9:00 a.m., and continuing from day-to-day thereafter until

COPY

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completed, and produce at the time of such examination all documents in the possession, custody or control of Monsanto Company as set forth in Exhibit A annexed to the defendants' motion. The Commission itself shall not be filed in the case file, but shall be directed to the court having jurisdiction over the above witness.

WATER_PCB-SD0000066663

JAN 6 1995

DATED this ___ day of January, 1995.

JACK A. RICHEY

~~HONORABLE J. KATHLEEN LEARNED~~

COURT COMMISSIONER

Presented by:

O'MELVENY & MYERS

By: Susan M. McNeill

Darrel M. Seife, Esq.
Admitted Pro Hac Vice
Susan M. McNeill, Esq.
Admitted Pro Hac Vice
153 East 53rd Street
New York, NY 10022
(212) 326-2000

and

AIKEN ST. LOUIS & SILJEG, P.S.

By: _____

Steven Soha, Esq. WSBA No. 09415
1215 Norton Building
801 Second Avenue
Seattle, WA 98104
(206) 624-2650

Attorneys for Defendants Insurance Company of North America, CIGNA Specialty Insurance Company (formerly known as California Union Insurance Company), Cravens, Dargan Co., Pacific Coast as managing general agent for Central National Insurance Company of Omaha and St. Paul Mercury Insurance Company in its capacity as a member company of AFIA (an insurance association)).

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Husch & Eppenberger

ATTORNEYS AT LAW

100 N. Broadway
Suite 1300
St. Louis, Missouri 63102
fax: 314-421-0239
314 421-4800

February 14, 1995

Via Facsimile Transmission

Susan McNeill, Esq.
O'Melveny & Myers
Citicorp Center
153 East 53d Street
New York, NY 10022-4611

Re: *Aluminum Company of America v. Accident & Casualty Ins. Co.*

Dear Ms. McNeill:

The deposition of Monsanto Company's custodian of records remains set for February 23, 1995 at 9:30 A.M.

Attached is a list of documents Monsanto has withheld from production on grounds of privilege.

The topics of testimony for the deposition will be those set forth in Paragraph 2 of your letter of February 10, 1995.

Please call if you have any questions concerning the production of documents or the deposition.

Very truly yours,

Charles E. Merrill

Charles E. Merrill

cc: Mark E. Haddad

DEFENDANT'S
EXHIBIT NO. B
FOR IDENTIFICATION
2-23-95
DATE: RPTR: RB

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT

ALUMINUM COMPANY OF AMERICA, et al.

PLAINTIFF

vs

No. M-3223
Div. No. 15

ACCIDENT & CASUALTY
INSURANCE CO., et al.

DEFENDANTS

MONSANTO COMPANY PRIVILEGED DOCUMENT LOG

Monsanto Company submits the following list of documents, which may be responsive to the Subpoena served upon it herein, but which have been withheld by Monsanto on the ground that they are subject to the attorney-client privilege.

1. Handwritten note to W. A Schneider (Law Department) from Ann Clark, dated 1/24/91, attaching typewritten note with handwriting, relating to document retention.

2. Memo to W. A. Schneider (Law Department) from Ann Clark, dated December 28, 1990, relating to document retention.

3. Memo to W. A. Schneider (Law Department) from K. R. Barnickol (Law Department), dated December 28, 1990, relating to document retention.

4. Memo to R. C. Loyer (Patent Department) from W. A. Schneider (Law Department), dated December 18, 1990, with handwritten note by R. C. Loyer, relating to document retention.

5. Memo to W. D. Lambert (Law Department) from R. C. Loyer (Patent Department), dated December 11, 1990, relating to document retention.

6. Memo to R. H. Shear (Patent Department) from P. L. Passley, dated December 6, 1990, relating to document retention.

7. Computer printout, dated February 2, 1991, bearing printed legend "Attorney Work Product - Privileged and

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Confidential," bearing handwritten marks and notes, relating to document retention.

8. Memo from R. A. Stohr to J. D. Anderson, A. E. Hoffman, H. R. Huff, E. J. Mackie, and M. A. Pierle, dated October 19, 1987, including "Blind note to Lawyers" (identified as B. J. Gilhousen, M. M. Liebman, and P. S. Park), relating to document retention, and attaching list of contracts and pages from Monsanto document retention policy.

HUSCH & EPPENBERGER

By: Charles E. Merrill

Charles E. Merrill, MBE #28238
100 North Broadway, Suite 1300
St. Louis, MO 63102
(314) 421-4800

Attorneys for Monsanto Company

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INDEX
ALAC 0000001-3514

1. Request No. 1.a-g,i-t; Request No. 3; Request No. 7.f; Request No. 9:

   ALAC 0000001 - 3283; 0003513-3514

2. Request No. 1. h:

   ALAC 0003296-3305; 0003314-3361; 0003363; 0003367-3373; 0003375-3382; 0003387; 0003388-3389; 0003390; 0003391; 0003392; 0003393; 0003394; 0003396; 0003398; 0003400; 0003401; 0003403; 0003406; 0003408; 0003409; 0003412; 0003413-3414; 0003417-3418; 0003419-3420; 0003423; 0003424-3425; 0003429-3457; 0003458-3462; 0003463-3467; 0003468-3471; 0003472; 0003478-3484; 0003485-3492; 0003493-3501; 0003502-3510

3. Request No. 4:

   ALAC 0003284-3290; 0003291-3295; 0003314-3361; 0003362; 0003365; 0003367-3373; 0003374; 0003375-3382; 0003385; 0003395; 0003404; 0003411; 0003421-3422; 0003429-3457; 0003458-3462; 0003463-3467; 0003477; 0003478-3484; 0003485-3492; 0003493-3501; 0003502-3510

4. Request No. 5:

   ALAC 0003306-3313; 0003314-3361; 0003364; 0003366; 0003367-3373; 0003375-3382; 0003383; 0003384; 0003386; 0003397; 0003399; 0003402; 0003405; 0003407; 0003410; 0003415-3416; 0003426-3427; 0003428; 0003429-3457; 0003458-3462; 0003473-3476; 0003478-3484; 0003485-3492; 0003493-3501; 0003502-3510; 0003511; 0003512

5. Request No. 13 a-d; g-h;

   None

